



MURIEL BOWSER
MAYOR

June 8, 2020

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

It is my pleasure to submit to the Council of the District of Columbia for its consideration the “New Hospital at St. Elizabeths Act of 2020.” This legislation and accompanying agreements will approve a proposed partnership with Universal Health Services to establish a new GW Health Hospital and Ambulatory Pavilion at St. Elizabeths East in Ward 8. The recent pandemic has highlighted the importance of having a strong, citywide health system that provides high quality, integrated care to all District residents.

One of the frustrating realities that our city faces is that we have some of the best hospitals and most talented medical professionals in the world right here in Washington, DC. In theory, everyone—regardless of zip code, income, or race—should be able to access world-class care, and we should not have major disparities in health outcomes. However, we know that is not our current reality as generations of racism and discrimination have put thousands of Black Washingtonians at a major health disadvantage.

Unfortunately, over the past three months, COVID-19 has laid bare the inequities in our systems—not just here in Washington, DC, but across the country.

The legislation and accompanying agreements submitted to you today seek to transform our health care system by promoting equity in care, access, and outcomes through the establishment of a new, state of the art, 136 bed community hospital and ambulatory pavilion. Critically, the new hospital will be integrated with the existing George Washington University Hospital with physicians, medical students, and research provided by the George Washington Medical Faculty Associates and George Washington University School of Medicine.

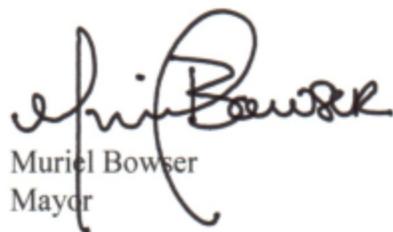
I want to highlight a few important issues that have been raised in the past and how they are addressed in the proposed legislation and accompanying agreements:

- The new hospital will provide comprehensive material health services, newborn deliveries and a Level II neonatal intensive care unit (NICU).
- The hospital will have a verified trauma center that can serve over 85% of the trauma cases that arise in Wards 7 and 8.
- The hospital will also include specialty services that align with community health needs.
- The construction and ongoing operations of the new hospital require compliance with the District's certified business enterprise (CBE) and First Source requirements.
- The new hospital will be required to apply for and receive a certificate of need (CON) from the State Health Planning and Development Agency.
- The legislation does not include any provision for the expansion of the existing George Washington University Hospital at Foggy Bottom or any CON exemptions.
- The agreements include a training program for existing United Medical Center (UMC) staff who wish to work at the new hospital to help ensure that existing UMC staff meet the credentialing and/or hiring standards of the new hospital. Staff who meet those standards and are interested in working at the new hospital will receive a hiring preference.
- Universal Health Services has committed to providing \$75 million over 10 years in support of the new hospital and integrated health system, including \$21 million for two urgent care facilities, one in Ward 7 and one in Ward 8.
- United Medical Center will remain open until the new hospital is constructed and ready to receive patients.

The new hospital, ambulatory facility, and urgent care facilities represent our commitment to DC health, opportunity, prosperity, and equity. If the legislation is approved by the Council, we expect that when these facilities open many residents who currently travel across the city for care will no longer need to do so.

We are very proud of the partnership with Universal Health Services and George Washington University. We are proud of all that is happening at the St. Elizabeths campus. I very much look forward to joining you and the community at this new hospital when it is opened.

Sincerely,



Muriel Bowser
Mayor


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve a contract in excess of \$1 million for the construction of a new hospital at St. Elizabeths; to authorize the Mayor to dispose of the hospital and the real property on which the hospital will be located; to approve a multiyear contract and contract in excess of \$1 million for the operation of the hospital; to establish a special fund as a startup reserve for the hospital; and to establish an uncompensated care requirement for the hospital.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "New Hospital at St. Elizabeths Act of 2020".

Sec. 2. Approval of new hospital at St. Elizabeths transaction documents.

(a) Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding any other provision of law, including the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*), the Council approves the Development Agreement between the District of Columbia and UHS Building Solutions, Inc., for the design and construction of a hospital and other facilities ("Hospital Facilities") at St. Elizabeths and other purposes ("Development Agreement"), transmitted by the Mayor to the Council on June 8, 2020, as a contract involving expenditures in excess of \$1 million during a 12-month period.

35 (b) Pursuant to section 451 of the District of Columbia Home Rule Act, approved
36 December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding any other
37 provision of law, including the Procurement Practices Reform Act of 2010, effective April 8,
38 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and the Public-Private
39 Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-
40 271.01 *et seq.*), the Council approves the Hospital Operations Agreement between the
41 Government of the District of Columbia and UHS East End Sub, LLC, for the operation of a
42 hospital at St. Elizabeths and for other purposes (“Operations Agreement”), transmitted by the
43 Mayor to the Council on June 8, 2020, as both a multiyear contract and a contract involving
44 expenditures in excess of \$1 million during a 12-month period.

45 (c) Notwithstanding any other provision of law, including An Act Authorizing the sale of
46 certain real estate in the District of Columbia no longer required for public purposes, approved
47 August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), the Council authorizes the Mayor
48 to dispose of the Hospital Facilities to UHS East End Sub, LLC, or its successor or assign, in fee
49 simple or by lease for up to 99 years and to dispose of the real property known for assessment
50 and taxation purposes as Lot 859 in Square 5868S (“New Hospital Property”) by lease for up to
51 99 years to UHS East End Sub, LLC, or its successor or assign,, as provided for in the Lease
52 Agreement between the District of Columbia as landlord and UHS East End Sub, LLC, as tenant
53 (“Lease Agreement”), transmitted by the Mayor to the Council on June 8, 2020, as such
54 agreement may be amended by the Mayor from time to time, and to provide easements to owners
55 of real property adjacent to the New Hospital Property and utility providers as may be necessary
56 or appropriate for the construction and operation of the Hospital Facilities.

57 (d) Notwithstanding any other provision of law, the Mayor is authorized to take such
58 actions as are appropriate to implement the Development Agreement, Operations Agreement,
59 and Lease Agreement.

60 Sec. 3. New hospital at St. Elizabeths startup reserve fund.

61 (a) There is established as a special fund the New Hospital at St. Elizabeths Startup
62 Reserve Fund (“Fund”), which shall be administered by the Department of Health Care Finance
63 in accordance with subsections (c) and (d) of this section.

64 (b) There shall be deposited into the Fund such amounts as shall be appropriated,
65 consistent with the Hospital Operations Agreement between the Government of the District of
66 Columbia and UHS East End Sub, LLC, for the operation of a hospital at St. Elizabeths and for
67 other purposes (“Operations Agreement”), approved pursuant to section 2(b) of the New
68 Hospital at St. Elizabeths Act of 2020.

69 (c) Money in the Fund shall be used for the purposes set forth in the Operations
70 Agreement.

71 (d)(1) The money deposited into the Fund but not expended in a fiscal year shall not
72 revert to the unassigned fund balance of the General Fund of the District of Columbia at the end
73 of a fiscal year, or at any other time.

74 (2) Subject to authorization in an approved budget and financial plan, any funds
75 appropriated in the Fund shall be continually available without regard to fiscal year limitation.

76 Sec. 4. Uncompensated care requirement.

77 Section 6 of the Health Services Planning Health Services Planning Program Re-
78 Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-
79 405), is amended by adding a new subsection (a-1) to read as follows:

80 “(a-1) For the hospital referred to in section 2(b) of the New Hospital at St. Elizabeths Act
81 of 2020, the requirement set forth in subsection (a) of this section that a health care facility
82 submit an assurance of its provision of a reasonable volume of uncompensated care through the
83 “annual compliance level” of 3% of its operating costs (total operating expenses of a facility as
84 set forth in an audited financial statement or its equivalent, minus the amount of reimbursement,
85 if any, under Titles XVIII and XIX of the Social Security Act) shall be replaced by a requirement
86 that the hospital submit an assurance of its compliance with the uncompensated care, charity
87 care, and community benefits requirement set forth in section 3.7 of the Hospital Operations
88 Agreement between the Government of the District of Columbia and UHS East End Sub, LLC,
89 approved pursuant to section 2(b) of the New Hospital at St. Elizabeths Act of 2020.”.

90 Sec. 5. Fiscal impact statement.

91 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
92 impact statement required by section 602(c)(3) of the Home Rule Act, approved December 24,
93 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

94 Sec. 6. Effective date.

95 This act shall take effect following approval by the Mayor (or in the event of veto by the
96 Mayor, action by the Council to override the veto), and a 30 day period of Congressional review
97 as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental
98 Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
99 206.02(c)(2)), and publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division



MEMORANDUM

TO: Ronan Gulstone
Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: June 2, 2020

RE: New Hospital at St. Elizabeths Act of 2020
(AE-20-363 rev.)

This is to Certify that this Office has reviewed the legislation entitled the “New Hospital at St. Elizabeths Act of 2020” and determined that it is legally sufficient, subject to the condition that the Hospital Project Documents, consisting of the Hospital Agreements (including a Development Agreement, a Hospital Operations Agreement, and a Lease Agreement) and ancillary transactional documents (including a Collaboration Agreement and a Guarantee) be submitted to the Council with the legislation.

If you have any questions, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: June 1, 2020

SUBJECT: Fiscal Impact Statement – New Hospital at St. Elizabeths Act of 2020

REFERENCE: Draft Introduction as provided to the Office of Revenue Analysis on
May 4, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 budget and proposed fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill (based on the Mayor’s errata letter dated June 1, 2020). The agreements approved by the bill are funded with \$375 million in capital costs, \$600,000 of operating budget in fiscal year 2021, and a total of \$5.6 million of operating budget during the fiscal year 2021 through fiscal year 2024 financial plan. Additional costs fall outside of the financial plan period.

Background

The bill approves¹ the Development Agreement, Operations Agreement, and Lease Agreement between the District of Columbia and Universal Health Services (UHS) for the design, construction, and operation of a general hospital, ambulatory pavilion, and parking garage (collectively referred to as the “Hospital”) at St. Elizabeths. The bill also exempts both the District and UHS from normal procurement² and disposition³ procedures as well as public-private partnership requirements.⁴ The bill also establishes the New Hospital at St. Elizabeths Startup Reserve Fund and requires the new

¹ Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

² Pursuant to the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 et seq.).

³ Pursuant to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

⁴ Pursuant to the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 et seq.).

The Honorable Phil Mendelson

FIS: "New Hospital at St. Elizabeths Act of 2020," Draft Introduction as provided to the Office of Revenue Analysis on May 6, 2020

Hospital to meet certain uncompensated care thresholds requirements⁵ to correspond to the Operations Agreement.

The Hospital will be a 136-bed facility that will offer medical, surgical, intensive care, women's health, emergency health, and imaging services. The District will own the Hospital and will pay for the costs of the project. An affiliate of UHS will provide program management services, managing the design, construction, furnishing, equipping, activation, and commissioning of the Hospital and supporting facilities.

Development Agreement

The Development Agreement includes the details of construction, including design and operation requirements, timeline for construction, development and completion milestones, labor and contractor requirements for the design and construction, and financing obligations. The following table outlines key components in the Development Agreement.

Development Agreement Summary	
Construction:	<ul style="list-style-type: none">▪ UHS will manage the design and construction of the hospital and its associated costs.▪ UHS will ensure that contractors are adhering to applicable District Law including Project Labor Agreements,⁶ Certified Business Enterprise⁷ requirements, and First Source requirements.⁸▪ The District will assist UHS with obtaining all permits and approvals for the project. The District will also apply and pay for the Certificate of Need (CON) on behalf of UHS.▪ The District retains approval rights to proceed with the project at critical phases.▪ The District and UHS must update the hospital schedule and cost at various stages of the project.
Financing:	<ul style="list-style-type: none">▪ The District contributes \$375 million towards construction:<ul style="list-style-type: none">○ \$293 million for the General Hospital (in-patient facility);○ \$69 million for the Ambulatory Pavilion (out-patient facility); and○ \$13 million for a parking garage.
Timeline	<ul style="list-style-type: none">▪ Fall of 2023 (Fiscal Year 2024) – Ambulatory Pavilion is open to patients.▪ Fall of 2024 (Fiscal Year 2025) – General Hospital is open to patients and Parking Facility opens.

Lease Agreement

The Lease Agreement describes the terms of occupancy of the Hospital and Parking Facility and UHS's obligations to operate the Hospital. The lease also provides terms for each side to terminate the Lease Agreement, as well as UHS purchase options. UHS may purchase the Hospital and Parking Facility from the District or enter into modified lease terms pertaining to the facilities, as long as it continues to operate a Hospital and Ambulatory Pavilion branded in a manner consistent with the branding of

⁵ By amending Section 6 of the Health Services Planning Health Services Planning Program Re-Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-405).

⁶ Meeting the requirements of D.C. Official Code § 2-356.06.

⁷ Pursuant to the Small, Local, and Disadvantaged Business Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.).

⁸ Pursuant to the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 et seq.).

the George Washington University Hospital in Foggy Bottom. The following table outlines key components in the Lease Agreement.

Lease Agreement Summary	
Lease Terms:	<ul style="list-style-type: none"> ▪ The District will retain ownership of the facilities and land that comprise the Hospital and Parking Facility and will lease the facilities and land to UHS. ▪ The District will lease the Hospital to UHS for a term of 75 years with a \$1 base rent. ▪ UHS will pay the District participation rent based on the percentage of the Hospital's gross revenues for each year where earnings before interest, taxes, depreciation, and amortization (EBITDA) exceeds a 12 percent margin.
Purchasing Rights:	<ul style="list-style-type: none"> ▪ UHS is given the option to purchase the Hospital and Parking Facility after 10 years. ▪ UHS may purchase the hospital building (but not the underlying land) in two ways: <ul style="list-style-type: none"> ○ Outright by paying the higher of the outstanding bond amount, or the fair market value of the Hospital. UHS then pays fair market rent for the land; or ○ Purchasing the business by paying to the District an annual lease payment equal to the greater of the annual debt service payment for the Hospital construction bonds and the fair market rent.
Termination of Lease:	<ul style="list-style-type: none"> ▪ UHS must provide the District with 18-months' notice if it decides to terminate the Lease Agreement after ten years and pay a penalty based on the number of years remaining on the lease. ▪ UHS is required to pay a penalty to the District if UHS is in material breach of the Lease Agreement in years 1 through 10.

Operations Agreement

The Operations Agreement defines the relationship between UHS and the District with regard to hospital operations, the establishment of other health care facilities and the making of other health care investments. It establishes the type and level of services to be offered in Hospital and performance standards for the provision of these services. The following table outlines key components in the Operations Agreement.

Operations Agreement Summary	
Hospital Operations	<ul style="list-style-type: none"> ▪ UHS will cover the cost of operations, physician staffing and management of the new hospital. ▪ UHS will staff the new Hospital with Medical Faculty Associates, the same physician group currently associated with the University. ▪ UHS will integrate the George Washington University Health brand and programing with new Hospital. ▪ UHS will achieve or demonstrate progress towards achieving national benchmarks. ▪ UHS will provide workforce development programs for District residents to pursue careers in health care.
Financial Commitments	<ul style="list-style-type: none"> ▪ UHS will spend \$75 million in healthcare infrastructure over ten years in Wards 7 and 8, including: <ul style="list-style-type: none"> ○ at least one urgent care or ambulatory center in Wards 7 and 8; and ○ An electronic health records system and capital expenditures at the new Hospital. ▪ UHS will dedicate three percent of operating expenses towards uncompensated care, charity care, or community benefits.

The Honorable Phil Mendelson

FIS: "New Hospital at St. Elizabeths Act of 2020," Draft Introduction as provided to the Office of Revenue
Analysis on May 6, 2020

- The District will require Medicaid Managed Care Organizations to pay the new Hospital at an enhanced Medicaid rate (148 percent of the 2019 Medicaid fee-for-service rate) due to the high volume of Medicaid patients in Ward 8.
- The District provides a \$25 million operating reserve by depositing \$5 million per year into a special purpose revenue fund (the New Hospital at St. Elizabeths Startup Reserve Fund) for the first five years of Hospital's operation. The fund must be used to return the Hospital to a 0 percent operating margin and dissolves after ten years.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 budget and proposed fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill (based on the Mayor's errata letter dated June 1, 2020). The bill approves the Development Agreement which requires the District to issue taxable bonds in an amount sufficient to cover the cost of the new Hospital. The Capital Improvement Plan included in the approved fiscal year 2020 budget as well as the proposed Capital Improvement Plan in the Mayor's proposed fiscal year 2021 budget will fund the anticipated \$375 million construction costs for the new Hospital.

The project budget assumes that the hospital building will be 251,409 square feet and have construction costs of \$946 per square foot. The proposed Parking Facility will have 500 spaces at a construction cost of \$25,000 per parking space. The Ambulatory Pavilion will be 77,164 square feet and have a construction cost of \$892 per square foot. The project budget also includes \$67.4 million for furniture, fixtures, medical equipment, and information technology equipment. The costs also include \$3 million to build infrastructure that will allow the Hospital to expand capacity in the future if needed. The proposed budget for hospital construction includes a 10 percent contingency reserve for unforeseen costs such as environmental remediation and deep foundation systems removal. When an architect is hired for the project and completes design drawings and project specifications, the architect shall update the estimated project budget and these documents are subject to approval by both the Project Manager and the District. The Project Manager is required to enter into one or more construction contracts that include a guaranteed maximum price. Any changes to the project budget, at any stage in the design, bidding, or construction process, will require District approval and any increases would require further appropriations.

The agreements allow the District to have a construction consultant and the Department of General Services (DGS) will use an existing project management contract associated with the St Elizabeths site to perform such work.

The agreements require the District to enter into Medicaid managed care contracts that direct the managed care organizations (MCOs) to pay an enhanced rate for services at the Hospital. This could cause Medicaid costs for the District to rise. However, there are many factors which will contribute to fiscal year 2024 Medicaid managed care costs, including health care market dynamics and Medicaid patient mix. Medicaid per member costs are set every year to ensure actuarial soundness, and the Department of Health Care Finance will complete a Medicaid rate rebasing in fiscal year 2023 to prepare the fiscal year 2024 budget. Any effects on the per member Medicaid costs resulting from

The Honorable Phil Mendelson

FIS: "New Hospital at St. Elizabeths Act of 2020," Draft Introduction as provided to the Office of Revenue Analysis on May 6, 2020

paying an enhanced rate to the new Hospital will be captured in the rebasing analysis for inclusion in the fiscal year 2024 budget.

The proposed fiscal year 2021 State Health Planning and Development Agency (SHPDA) budget includes \$600,000 in local funds to complete the Certificate of Need approval process on behalf of UHS.

The District must deposit \$5 million on an annual basis into the New Hospital at St Elizabeths Startup Reserve Fund (Fund) beginning in fiscal year 2024 and ending in fiscal year 2028. In total, \$25 million will be deposited into the Fund. The fund balance will be available to the Hospital for a period of 10 years and can be used to reduce the Hospital's annual operating deficits. If the reserve is needed, UHS is required to provide to the District financial statements and other supporting documentation to demonstrate how the Hospital's deficit was calculated.

New Hospital at St. Elizabeths Act of 2020						
Total Cost (\$ thousands)						
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total
Construction Costs	\$8,205	\$36,775	\$114,315	\$126,425	\$88,961	\$374,681
Certificate of Need Fees	\$0	\$600	\$0	\$0	\$0	\$600
Operating Reserve Deposit	\$0	\$0	\$0	\$0	\$5,000	\$5,000
Total	\$8,205	\$37,375	\$114,315	\$126,425	\$93,961	\$380,281

GOVERNMENT OF THE DISTRICT OF COLUMBIA



COUNCIL CONTRACT SUMMARY

In support of the proposed New Hospital at St. Elizabeths Act of 2020, the following contract summary is provided:

A. The contract number, proposed contractor, contract amount, unit and method of compensation, contract term, and type of contract

Proposed Contractor:	UHS East End Sub, LLC, and UHS Building Solutions, Inc.
Contract No.:	n/a
Contract Amount:	\$400,000,000 (\$375,000,000 for Development Agreement; \$25,000,000 for Hospital Operations Agreement)
Unit and Method of Compensation:	Fixed cost for Development Agreement; not-to-exceed for Hospital Operations Agreement
Contract Caption:	New Hospital at St. Elizabeths
Term of Contract:	Up to 75 Years
Type of Contract:	Development Agreement, Hospital Operations Agreement

B. The goods or services to be provided, including a description of the economic impact of the proposed contract, the social impact of the proposed contract, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract:

Overview:

The recent pandemic has highlighted the importance of having a strong, citywide health system that provides high quality, integrated care to all District residents. Unfortunately, over the past three months, COVID-19 has laid bare the inequities in our systems—not just here in Washington, DC, but across the country.

One of the frustrating realities that our city faces is that we have some of the best hospitals and most talented medical professionals in the world right here in Washington, DC. In theory, everyone—regardless of zip code, income, or race—should be able to access world-class care, and we should not have major disparities in health outcomes. However, we know that is not our current reality as generations of racism and discrimination have put thousands of black Washingtonians at a major health disadvantage.

The legislation and accompanying agreements seek to transform our health care system by promoting equity in care, access, and outcomes east of the Anacostia River, through the establishment of a new, \$293 million, state of the art, 136 bed (with the ability for it to be expanded in the future to 196 beds) community hospital with a verified trauma center, a \$69 million ambulatory pavilion for outpatient procedures, primary and specialty care offices, cancer services and community space, and a \$13 million garage.

Hospital Operations Agreement:

The operations of the new GW Health Hospital at St. Elizabeths East will be governed by the Hospital Operations Agreement. The hospital will be integrated with the existing George Washington University Hospital at Foggy Bottom, with physicians, medical students, and research provided by the George Washington Medical Faculty Associates and George Washington University School of Medicine.

Specifically:

- The hospital will provide comprehensive material health services, newborn deliveries and a Level II neonatal intensive care unit (NICU).
- The hospital will have a verified trauma center that can serve over 85% of the trauma cases that arise in Wards 7 and 8.
- The hospital will also include specialty services that align with community health needs.
- The operations of the hospital require compliance with the District's certified business enterprise (CBE) and First Source requirements.
- The hospital will be required to apply for and receive a certificate of need (CON) from the State Health Planning and Development Agency.
- The agreement includes a training program for existing United Medical Center (UMC) staff who wish to work at the hospital to help ensure that existing UMC staff meet the credentialing standards of the hospital. Staff who meet those standards and are interested in working at the hospital will receive a hiring preference.

In addition:

- Universal Health Services has committed to providing \$75 million over 10 years in support of the new hospital and integrated health system, including \$21 million for two urgent care facilities, one in Ward 7 and one in Ward 8; and
- United Medical Center will remain open until the new hospital is constructed and ready to receive patients.

In addition to the above commitments, the Hospital Operations Agreement also covers issues such as lines of service, community engagement, workforce development, labor, branding and hospital staffing, payment and performance guaranty and hospital governance.

Once operational, in year 1, the hospital and ambulatory pavilion will support over 500 full-time equivalents and, by year 10 of operations, will support over 900 full-time equivalents. As part of the agreement, UHS East End (the operating entity) will prepare qualified District residents for employment at the hospital and in health professions fields by establishing formal partnerships with the District's workforce, health, economic development, and public and higher education agencies, as well as community-based organizations serving Ward 7 and Ward 8. These partnerships are intended to prepare qualified District residents for employment at the hospital and in health professional fields.

The hospital operator will also establish partnerships to implement learning, training, hiring, and mentoring programs for District residents interested in pursuing health care careers. These programs shall support the development of a human capital pipeline for current and future employment opportunities. Partnerships may include programs with: public high schools in Ward 7 or Ward 8; the University of the District of Columbia; and/or DOES, including apprenticeships, on-the-job training programs and the Marion Barry Summer Youth Employment Program. These partnerships shall seek to establish and/or support existing or new programs that prepare District residents for careers in, and continued education and training in, the health care industry, including preparation and training for jobs and careers at the hospital, the operating entity's ambulatory and urgent care facilities, and other operating entity-related facilities.

Development Agreement:

The construction of the new facility will be governed by the Development Agreement, which provides for UHS Building Solutions to serve as the Program Manager for the project with significant oversight from the District. The Development Agreement also lays out the responsibilities of each party, the procurement and bid processes, the scope of work to be completed, project budget and estimated timeline. Based on current analysis, we expect the ambulatory facility to open in September of 2023 and the hospital and garage to open in August of 2024. In addition, the Development Agreement requires compliance with the District's certified business enterprise (CBE) and First Source requirements during construction of the hospital. The construction cost of the above facilities totals \$375 million, which includes a Project Labor Agreement.

C. The selection process, including the number of offerors, the evaluation criteria, and the evaluation results including price and technical components:

At the beginning of the selection process, the Mayor established four objectives for the project, which were as follows:

1. Ensure that residents of Wards 7 and 8 have access to high quality inpatient care that is connected to a comprehensive system of care.
2. Once a new hospital is constructed, establish a responsible end to operations at UMC due to accumulating losses and diminishing assets and services.
3. Secure a partnership with a "branded", financially strong, regional or national health care operator who can completely "own" and be responsible for a new hospital, including its profits and losses.

4. Remove the District from the “health care” business. Government-run, stand alone hospitals are no longer viable.

Next the Mayor engaged with firms with background in hospital construction and health care delivery analysis. Specifically, from 2016 to 2018:

Huron Consulting analyzed the feasibility of a new hospital in Wards 7 and 8 and determined that if the District were to pursue a new hospital with an ambulatory facility, that a “community” sized facility of approximately 100-150 beds would support the District and local community health needs and be financially feasible if operated by a financially strong and reputable hospital provider/system that was connected to a larger health care system. With the assistance of Huron, the Mayor established criteria to use in selection of a partner. The full Huron analysis was completed and posted online in March 2018 at <https://dhcf.dc.gov/page/new-hospital-st-elizabeths-east>.

Concurrently, Healthcare Building Solutions (HBS) reviewed multiple sites for a new hospital in Wards 7 and 8 and determined that the St. Elizabeths site was preferable, that the District should assume a Mid-Atlantic constructed rate of \$2M per bed for the hospital facility and that, in order for a new hospital to be built at St. Elizabeths, the current 801 East shelter must be relocated, wet and dry utilities and roads must be added, and a new garage must be constructed before a new health care facility could be constructed. The studies completed by HBS were also posted online in March of 2018 at <https://dhcf.dc.gov/page/new-hospital-st-elizabeths-east>.

Over the course of these analyses, Huron and District representatives met with regional and national hospital systems to determine their level of interest in operating a new hospital in Wards 7 and 8. Huron and the Mayor’s representatives specifically met or spoke with representatives of UHS/GWUH, Inova, Ascension, Holy Cross, Adventist, Howard, Johns Hopkins, Medstar and the University of Maryland. Only UHS/GWUH, Howard, and Johns Hopkins expressed an interest in partnering with the District.

The Mayor selected the UHS proposal because:

- A hospital fully operated and maintained by UHS would give residents access to a high-quality community hospital that would be part of a larger health care system to include GW physicians, specialists, and services at George Washington University Hospital at Foggy Bottom.
- UHS financial stability decreased the chance that the District would need to re-enter the healthcare business over the long term.
- UHS committed to investing \$75 million over ten years to include two urgent care centers in Wards 7 and 8.
- UHS has knowledge of constructing and operating hospitals that would allow a new facility to open as quickly as possible.
- UHS/GWUH is already serving a significant number of residents who reside in Wards 7 and 8.
- UHS/GWUH has a good relationship with Children’s National and Whitman Walker who also provide critical services to residents in the community.

D. The background and qualifications of the proposed contractor including its organization, financial stability, personnel, and prior performance on contracts with the District of Columbia government:

As a Fortune 500 company, Universal Health Services is one of the nation’s largest providers of health care services, with over 400 facilities and 90,000 employees globally. In 2019, UHS delivered care to 3.5 million patients across inpatient and outpatient access points and had total net revenues of approximately \$11.4 billion.

In Washington D.C., Universal Health Services has provided healthcare to District residents and surrounding jurisdictions through the operation of the George Washington University Hospital (GWUH) since 1997. In 2019, GWUH had nearly 70,000 emergency room visits, over 21,000 inpatient admissions, over 143,000 outpatient visits, and delivered over 3,000 babies.

E. Performance standards and the expected outcomes of the proposed contract:

The establishment of a new, state of the art, 136 bed community hospital (with ability to expand to 196 beds in the future), with a verified trauma center at St. Elizabeths East in Ward 8 is expected to greatly increase access to high quality health care for District residents and in particular, the residents of Wards 7 and 8. Specifically, through the establishment of a new inpatient hospital, ambulatory center, and two urgent care centers (one in Ward 7 and one in Ward 8), the District seeks to establish an integrated health care system that can improve health outcomes and reduce persistent health disparities. The Hospital Operations Agreement also requires the provision of maternal health services, newborn deliveries and a Level II neonatal intensive care unit (NICU) so that residents can deliver babies in a state-of-the-art hospital close to home.

The Hospital Operations Agreement requires that the operating entity shall ensure that (a) the hospital participates in the same quality programs as the George Washington University Hospital Foggy Bottom Facility, as appropriate to service line complements, and (b) the hospital achieves or demonstrates progress towards achievement of performance at a level of “national benchmark or better” on national service standards (the “Service Standards”) and national quality standards (the “Quality Standards”).

To demonstrate achievement of the Service Standards and the Quality Standards, the operating entity shall, in addition to such other actions as are reasonably necessary to demonstrate achievement of or progress towards hospital performance at a level of “national benchmark or better” on the Service Standards and Quality Standards, ensure that the hospital:

- Obtains and maintains eligibility for participation in Medicare, Medicaid, and other payment programs;
- Operates in compliance with applicable municipal, state, and federal laws which require reporting of quality and safety performance(s);
- Obtains and maintains accreditation by the applicable accrediting bodies, including The Joint Commission (“TJC”); and

- Seeks specialty registries and/or accreditation from accrediting bodies such as the American College of Surgeons.

The operating entity of the hospital shall participate in all routine national quality reporting so as to ensure public availability of the hospital's quality performance data. In addition to mandatory reporting requirements associated with the federal Centers for Medicare and Medicaid Services and TJC accreditation, the operating entity shall complete annually the Leapfrog Hospital Survey for the hospital, inclusive of all available data, and, annually, complete on behalf of the ambulatory facility any quality surveys that are completed and submitted on behalf of the ambulatory and outpatient facilities of the Foggy Bottom facility, as appropriate to service line complements of the ambulatory facility

F. A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with §§ 47-392.01 and 47-392.02:

The Office of the Chief Financial Officer provided a fiscal impact statement certification, dated June 1, 2020.

G. A certification that the proposed contract is legally sufficient and has been reviewed by the Office of the Attorney General, including whether the proposed contractor has any currently pending claims against the District:

The proposed contracts have been reviewed by the Office of the Attorney General and found to be legally sufficient, as reflected in a certification dated June 2, 2020.

H. A certification that the proposed contractor is current with its District and federal taxes or has worked out and is current with a payment schedule approved by the District or federal government:

Tax verification letters have been obtained by both UHS Building Solutions and UHS East End.

I. The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise:

The contractors are not a certified local, small, or disadvantaged business enterprises.

J. Other aspects of the proposed contract that the Mayor deems significant:

None.

K. A statement indicating whether the proposed contractor is currently debarred from providing services to any governmental entity (federal, state, or municipal) the dates of the debarment, and the reasons for the debarment:

The proposed contractors are not debarred from providing government services.

L. Where the contract, if executed, will be made available online:

<https://dhcf.dc.gov/page/new-hospital-st-elizabeths-east>

DEVELOPMENT AGREEMENT

between

DISTRICT OF COLUMBIA

and

UHS Building Solutions, Inc.

Dated as of [], 2020

Table of Contents

	Page
ARTICLE 1	DEFINITIONS..... 2
ARTICLE 2	REPRESENTATIONS AND WARRANTIES..... 11
2.1.	Program Manager’s Representations and Warranties..... 11
2.2.	District Representations and Warranties..... 13
2.3.	Disclaimer of Warranties 13
2.4.	Limitation of Funds..... 14
ARTICLE 3	PROGRAM MANAGER ROLE AND OBLIGATIONS; DISTRICT CONSENTS 14
3.1.	Program Manager Services 14
3.2.	Program Manager Role 15
3.3.	Enforcement of Contracts 15
3.4.	Program Manager Not Liable for Actions of Contractors 16
3.5.	Governmental Authority Reviews and Approvals 16
3.6.	District Consent to Form and Substance of Contracts and Amendments 16
ARTICLE 4	DESIGN AND-CONSTRUCTION 17
4.1.	Project Plans and Specifications 17
4.2.	Project Construction Contract(s)..... 19
4.3.	Permits and Approvals 20
4.4.	Construction Consultant..... 21
4.5.	Preliminary Schedule; CPM Schedule; Project Coordination Meetings; Inspection and Monitoring Rights 21
4.6.	Change Orders to the Work 23
4.7.	Disbursement of Progress Payments..... 27
4.8.	Contractors Bid Process 32
ARTICLE 5	CONSTRUCTION OF THE PROJECT..... 33
5.1.	Performance and Payment Bond; Development 33
5.2.	Conditions to Commencement of Construction..... 33
5.3.	Program Manager’s Obligations regarding Construction of the Project 34
5.4.	Compliance with Applicable Laws, Land Use Approvals and Permits and Approvals 35
5.5.	Utilities..... 35

Table of Contents
(continued)

	Page
5.6. Davis-Bacon Act.....	35
5.7. Green Building Act.....	36
5.8. Apprenticeship Act	36
5.9. Project Labor Agreement.....	36
5.10. Utilization of District Businesses.....	36
5.11. Hiring of District Residents	36
5.12. Substantial Completion and Final Completion of Construction of the Project	36
5.13. Subcontracting and Administration	38
5.14. Written Monthly Reports	38
5.15. Warranties	39
5.16. Open Book Reporting	39
5.17. Site Safety and Clean-Up.....	40
5.18. Buy American Act Provision. Each Architect Contract and Contract shall provide that Architect and Contractors shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.....	40
5.19. Partnering	41
ARTICLE 6 COVENANTS OF DISTRICT AND PROGRAM MANAGER	42
6.1. Covenants of District	42
6.2. Covenants of Program Manager	42
ARTICLE 7 INSURANCE, DAMAGE AND DESTRUCTION.....	44
7.1. General Requirements.....	44
7.2. Primary And Noncontributory Insurance.....	48
7.3. Duration	48
7.4. Liability.....	48
7.5. Contractor’s Property.....	48
7.6. Measure Of Payment.....	48
7.7. Notification	48
7.8. Certificates Of Insurance	48
7.9. Disclosure Of Information	48

Table of Contents
(continued)

	Page
13.1. Limitation of Rights.....	56
13.2. Notices	56
13.3. Waiver.....	56
13.4. Effect of Granting or Failure To Grant Approvals or Consents	56
13.5. Titles of Sections.....	57
13.6. Relationship of Parties	57
13.7. Applicable Law	57
13.8. Further Assurances.....	57
13.9. Severability	57
13.10. Joint Preparation	57
13.11. Counterparts.....	57
13.12. Incorporation of Exhibits	57
13.13. Survival.....	58
13.14. Entire Agreement.....	58
13.15. Amendments and Supplements.....	58
13.16. Confidentiality	58
13.17. Waiver of Jury Trial.....	58
13.18. Law Applicable; Forum for Disputes	58
13.19. Rules of Construction	58
13.20. False Claims Provisions.....	59
13.21. Time of the Essence; Standard of Performance.....	59
13.22. Third Party Beneficiaries	59
13.23. Counterparts.....	59
13.24. Attorney’s Fees	59
13.25. District as Contracting Party.....	59

TABLE OF CONTENTS

Page

Exhibit List

Land	Exhibit A
Capital Eligibility Guidelines	Exhibit B
Application for Payment Form	Exhibit C
List of Environmental and Construction Reports	Exhibit D
Reserved	Exhibit E
Reserved	Exhibit F
Lien Waiver	Exhibit G
Reserved	Exhibit H
CBE Subcontracting Plan	Exhibit I
Davis-Bacon and Related Acts, Provisions, Procedures And Wage Rates.....	Exhibit J
Construction Contract(s) Requirements	Exhibit K
Work, Schedule and Budget	Exhibit L
Land Use Approvals	Exhibit M

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made as of _____, 2020 (the “**Effective Date**”), by and among the **DISTRICT OF COLUMBIA**, a municipal corporation (hereinafter referred to as the “**District**”), and UHS Building Solutions, Inc., a Delaware corporation (the “**Program Manager**”), a wholly-owned subsidiary of Universal Health Services, Inc. (“**UHS**”) for the project to be known as the GW Health Hospital at St. Elizabeths, which shall be situated on the real property in the District of Columbia hereinafter defined as the Land.

RECITALS:

A. WHEREAS, District is the fee simple owner of the parcel of real property located in the District of Columbia and known for assessment and taxation purposes as Lot 0859, Square 5868-S, and further described in Exhibit A, attached hereto and incorporated herein (the “**Land**”).

B. WHEREAS, simultaneously herewith, District and UHS entered into a Collaboration Agreement (the “**Collaboration Agreement**”) outlining a collaboration between the District, UHS and UHS affiliated entities including the Program Manager to operate the new acute-care community hospital on the St. Elizabeths East Campus (including the inpatient hospital facility (the “**Inpatient Hospital**”) and associated ambulatory pavilion and outpatient facilities (the “**Ambulatory Facility**”) and a multistory parking facility that will primarily serve the Inpatient Hospital, its patients, visitors, and staff, and others with business at the Inpatient Hospital (the “**Parking Facility**”) (collectively the Parking Facility, the Ambulatory Facility and Inpatient Hospital, shall be defined as the “**Hospital**”) that will continue the District’s commitment to reinvesting in its communities, including access to comprehensive and quality health care services is a major goal of the District on the Land, and other related matters.

C. WHEREAS, Program Manager and Program Manager Affiliates have experience developing and managing the construction and development of hospitals similar to the Hospital.

D. WHEREAS, District desires to contract with Program Manager to provide program management services in connection with the design, construction, furnishing, equipping, activation, and Commissioning of the Hospital and supporting facilities, and Program Manager wishes to provide those services on the terms and conditions hereinafter set forth.

E. WHEREAS, District will own the Hospital, and District will pay the Cost of the Project pursuant to the terms of this Agreement.

F. WHEREAS, simultaneously herewith, District and UHS East End Sub, LLC, a wholly-owned subsidiary of UHS as “**Operating Entity**” entered into a Hospital Operations Agreement, pursuant to which the Operating Entity thereunder (“**Operations Agreement**”) agreed to operate the Hospital in accordance with the terms and conditions set forth therein.

G. WHEREAS, simultaneously herewith, District and UHS East End Sub, LLC, a wholly-owned subsidiary of UHS as “**Tenant**” entered into a Lease Agreement, pursuant to which District will lease the Land and Hospital to Tenant (“**Lease**”) after Substantial Completion (as defined below).

H. WHEREAS, the Council of the District of Columbia authorized the Mayor to execute this Agreement in [authorizing Act name, citation, and effective date].

I. WHEREAS, Program Manager plans to develop the Hospital in the following segments: (i) design and engineering for the Hospital; (ii) Ambulatory Facility construction; (iii) Inpatient Hospital construction phase 1; (iv) Inpatient Hospital construction phase 2; (v) Parking Facility construction (approximately 500 spaces); and (vi) furniture, furnishings, fixtures, and equipment installation.

J. WHEREAS, the Hospital will be completed and submitted by Contractors for Program Manager and District at Substantial Completion and Final Completion, each as defined herein, and in the following phases (i) Ambulatory Facility, (ii) Inpatient Hospital and (iii) Parking Facility (collectively the "**Phases**" and each a "**Phase**").

K. WHEREAS, District and Program Manager desire that the Phases be completed no later than the dates set forth in Exhibit L, for the Project ("**Substantial Completion Date(s)**"), as shall be updated in accordance with this Agreement.

L. WHEREAS, District and Program Manager have established a Project Budget including all design, hard construction and general conditions costs of the Work to complete the Project on the Land, as shall be updated in accordance with this Agreement.

M. WHEREAS, District and Program Manager have established the scope of work herein as the "Work" attached hereto as Exhibit L to design, construct, furnish, equip, and Commission the Project (as shall be updated in accordance with this Agreement).

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, including the granting of the Lease to an Affiliate of the Program Manager and owned by UHS, District and Program Manager agree as follows:

ARTICLE 1 DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

"**ADA**" shall mean the Americans with Disabilities Act of 1990, as amended.

"**Affiliate**" shall mean with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member, or trustee of such first Person, or (iii) any officer, director, general partner, manager, member, or trustee of any Person described in clauses (i) or (ii) of this sentence.

"**Agreement**" shall mean collectively, this Agreement and all exhibits and attachments hereto, as any of the same hereafter may be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the Parties.

“Agreement Change Directive” shall mean a change as directed to Program Manager by District issued in accordance with the terms of this Agreement to the (i) scope of the Work included in this Agreement; (ii) Project Budget included in this Agreement; or (iii) CPM Schedule, included in this Agreement.

“Agreement Change Order” shall mean any written instrument issued after the Effective Date signed by District and Program Manager issued in accordance with the terms of this Agreement, stating their agreement upon a change to any of the following: (i) the scope of the Work included in this Agreement; (ii) the Project Budget included in this Agreement; and (iii) the CPM Schedule included in this Agreement.

“Ambulatory Facility” shall have the meaning set forth in the Recitals.

“Applicable Law” shall mean all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, Davis-Bacon Act, Green Building Act, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over the Project and/or the Land or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Land.

“Application for Payment” shall have the meaning set forth in Section 4.7(e).

“Approved Design(s)” shall mean the conceptual design for each of the Phases of the Work, as agreed upon by the Parties in accordance with Section 4.1(d)(i).

“Architect” shall mean such architect as shall be engaged from time to time by Program Manager to design the Project in accordance with the terms of this Agreement.

“Architect Contract” shall mean the contract between the Architect and the Program Manager.

“Assignment” shall mean a sale, exchange, assignment, lease, transfer or other disposition by Program Manager of Program Manager’s rights and interest under this Agreement, whether by operation of law or otherwise.

“BIM” shall mean a Building Information Model for the Project.

“Bonds” shall mean the debt instruments issued by the District for the purpose of funding Project in accordance with this Agreement.

“Building Equipment” shall mean all personal property and fixtures incorporated in, located within, at or attached to and used or usable in the operation of, or in connection with, the Project (but then only to the extent of Program Manager’s rights therein) and shall include, but shall not be limited to, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof. The term “Building Equipment” shall not include any personal property owned or leased by the Tenant under the Lease or any other occupant of all or any portion of the Hospital.

“Business Day” shall mean Monday through Friday, inclusive, other than holidays recognized by District of Columbia government or days on which District of Columbia government is officially closed.

“CBE” shall have the meaning set forth in the CBE Act for the term “Certified Business Enterprise.”

“CBE Act” shall mean the Small and Certified Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33, as amended as of February 1, 2020 (codified at D.C. Official Code §§ 2-218.01 et seq.)

“CBE Utilization Agreement” shall mean an agreement with District regarding the utilization of CBE entities in accordance with the CBE Act.

“Certificates of Occupancy” shall mean the temporary and/or permanent certificate or certificates of occupancy issued for the Project permitting occupancy for its intended use as then in force.

“Certificate of Substantial Completion” shall have the meaning set forth in Section 5.12.

“Collaboration Agreement” shall have the meaning set forth in the Recitals.

“CGL” shall have the meaning set forth in Section 7.1.

“Commission” and **“Commissioning”** shall mean the systematic process of assuring by verification and documentation, from the design phase to a minimum of one year after Substantial Completion of the Hospital, that all facility systems perform interactively in accordance with the design documentation and intent, including preparation of Hospital facility operations personnel.

“CON” shall mean a certificate of need specified in DC Official Code 44 – 401 et. seq. of the Health Services Planning Program Reestablishment Act of 1996, as amended, and the Certificate of Need (CON) Regulations (Title 22B, DC Municipal Regulations, Sec. 4000, et seq.)

“Construction Consultant” shall have the meaning set forth in Section 3.4.

“Construction Contract(s)” shall have the meaning set forth in Section 4.2(a).

“Construction Contractor(s)” means the Contractor(s) selected by Program Manager to serve as the Contractor under the Construction Contract(s).

“Contract” shall mean the agreement for performance of the Work between Program Manager and each Contractor.

“Contractor” and **“Contractors”** shall mean the contractors hired by the Program Manager through Contracts in accordance with the terms of this Agreement to construct, furnish, equip, activate, and Commission the Project.

“Contract Change Directive” shall mean a change as directed to Contractor(s) by Program Manager in accordance with the terms of Contract to the (i) the scope of the Work in the Contract; (ii) the Project Budget in the Contract; and (iii) the CPM Schedule in the Contract.

“Contract Change Order” shall mean a change order requested by the Contractor(s) or Program Manager in accordance with the terms of a Contract(s), signed by Contractor and Program Manager stating their agreement upon a mutually-agreed upon change to any of the following: (i) the scope of the Work in the Contract; (ii) the Project Budget in the Contract; or (iii) the CPM Schedule in the Contract. A Contract Change Order shall be subject to approval by District, to the extent such approval is required in accordance with the requirements of Section 4.

“Control” shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners, or Persons exercising similar authority with respect to the subject Person. The terms **“Control,”**

“Controlling,” “Controlled by,” or “under common Control with” shall have meanings correlative thereto.

“Cost of the Project” shall mean the cost of the Project including the Work, all of which is included within the Project Budget (as the same may be updated as provided in this Agreement), as approved by District and Program Manager in accordance with the terms of this Agreement, to be disbursed pursuant to the requirements set forth in Section 4.7.

“Council” shall mean the Council of District of Columbia.

“CPM” shall have the meaning set forth in Section 4.5(b).

“CPM Schedule” shall have the meaning set forth in Section 4.5(b).

“DCFOIA” shall have the meaning set forth in Section 13.16.

“DCRA” shall mean District of Columbia Department of Consumer and Regulatory Affairs, or any successor agency.

“Design Development” shall mean 100% design and permit documents. The Design Development set integrates all design elements in order to provide sufficient information for Contractor to submit a guaranteed maximum price proposal and satisfy permit requirements. The documents include, but are not limited to, plans, sections, elevations, typical construction details, three-dimensional sketches, study models, final material selection, equipment layout, and estimates of construction cost supportive of a guaranteed maximum price contract.

“Design Modification” shall have the meaning set forth in Section 4.1(f).

“Design Modification Directive” shall have the meaning set forth in Section 4.1(f)(ii).

“Detrimental to the Project” shall have the meaning set forth in Section 4.6(d)(v).

“Dispute” shall have the meaning set forth in Section 10.5.

“District” shall have the meaning set forth in the Preamble.

“District Indemnified Parties” shall mean, collectively, the District of Columbia, including, without limitation, any agencies, instrumentalities, and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, directors, agents, and employees.

“DOES” shall mean District of Columbia Department of Employment Services or any successor agency.

“DSLBD” shall mean District of Columbia Department of Small and Local Business Development or any successor agency.

“Effective Date” shall have the meaning set forth in the Preamble.

“Environmental Law(s)” shall mean any present and future federal, state, or local law and any amendments (whether common law, statute, rule, order, regulation, or otherwise), permits, and other requirements or guidelines of Governmental Authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; D.C. Code Title 8, Chapter 1 (Environmental Controls); and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

“Event of Default” shall have the meaning set forth in Section 10.1.

“False Claims Provisions” shall have the meaning set forth in Section 13.20.

“Final Completion” shall mean the point at which the Work with respect to the Project including all punch list items has been completed by the Contractor in accordance with the terms of the Construction Contract(s).

“Final Completion Date” shall mean the date(s) of Final Completion which occur after the Substantial Completion Date(s) as initially set forth in Exhibit L, as may be adjusted in accordance with the terms of this Agreement.

“**Final Payment**” shall mean the final payment to be made by District pursuant to the provisions of Section 4.7.

“**First Source Act**” shall mean the First Source Employment Agreement Act of 1984, as amended (D.C. Official Code §§ 2-219.01 et seq.).

“**First Source Employment Agreement**” shall mean the agreement with the District requiring compliance with the First Source Act.

“**Governmental Authority**” or “**Governmental Authorities**” shall mean the United States of America, District of Columbia, and any agency, department, commission, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Program Manager or over the Project, the Land or any portion thereof or any street, road, avenue or sidewalk comprising a part of the Land, or any vault in or under or airspace over the Project or the Land.

“**Green Building Act**” shall mean the Green Building Act of 2006, D.C. Law 16-234, as amended, together with the regulations promulgated in connection therewith.

“**Hazardous Material(s)**” shall mean (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” or “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (excluding Nuclear Regulatory Commission licensed radioactive materials used for Hospital operations), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which could be detrimental to the Land or hazardous to health or the environment.

“**Hospital**” shall have the meaning set forth in the Recitals.

“**Inpatient Hospital**” shall have the meaning set forth in the Recitals.

“**Instruments of Service**” shall have the meaning set forth in Section 10.4(b).

“**ISO**” shall have the meaning set forth in Section 7.1(c).

“**Land**” shall have the meaning set forth in the Recitals.

“**Land Use Approvals**” shall mean all plan reviews and zoning approvals and/or waivers, necessary to obtain the Permits and Approvals for the construction and contemplated uses of the Project. The term “Land Use Approvals” shall not include the certificate of need for the Hospital (the “CON”) which shall be obtained by District in accordance with the Operations Agreement.

“**Lease**” shall have the meaning set forth in the Recitals.

“**Notice Address**” shall mean the address for notice set forth below, as amended from time to time by notice sent to the other Party as provided herein:

To District: Department of General Services
2000 14th Street, NW
8th Floor
Washington, DC 20009
Attention: Director

with a copy to: Department of General Services
2000 14th Street, NW
8th Floor
Washington, DC 20009
Attention: Capital Construction and Chief Project Delivery
Office / Deputy Director of Capital Construction Division

with a copy to: Department of General Services
2000 14th Street, NW
8th Floor
Washington, DC 20009
Attention: General Counsel

To Program Manager: UHS Building Solutions, Inc.
Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attn: Vice President Design and Construction – Mark
D’Arcy

“**Notice to Proceed**” shall mean a written notice to proceed, signed by District, directing Program Manager to have a Contractor proceed with the Work under each Phase of the Project.

“**OCFO**” shall have the meaning set forth in Section 4.7(k).

“**Operating Entity**” has the meaning set forth in the recitals.

“**Operations Agreement**” shall have the meaning set forth in the Recitals.

“**Outside Performance Dates**” shall have the meaning set forth in Section 11.2.

“**Parking Facility**” shall have the meaning set forth in the Recitals.

“**Party(ies)**” when used in the singular, shall mean either District or Program Manager; when used in the plural, shall mean both District and Program Manager.

“**Performance and Payment Bond**” shall have the meaning set forth in Section 5.1.

“Permits and Approvals” shall mean any and all permits, approvals and/or waivers required and/or necessary to be issued by Governmental Authorities in connection with the construction of the Project.

“Person” shall mean any individual, corporation, limited liability company, trust, partnership, association, or other entity.

“Phase” or **“Phases”** shall have the meaning set forth in the Recitals.

“Phase Budget Amendment” shall have the meaning set forth in Section 4.1(d)(i).

“Plans and Specifications” shall mean, collectively, all plans and specifications as developed in accordance with the Approved Designs for the Project and approved by the Parties as such plans and specifications for the Phases of the Work may be modified from time to time only in accordance with the terms of this Agreement and as mutually approved by District and Program Manager.

“Program Manager” shall have the meaning set forth in the Preamble.

“Progress Payments” shall mean the progress payments to be made by District pursuant to the provision Section 4.7.

“Prohibited Person” shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) conspiracy to commit a crime, (v) making false statements to a governmental agency, (vi) improperly influencing a governmental official, or (vii) extortion; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. § 4301 et seq., as amended; (y) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (z) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended; or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above; or (E) any Person who could be debarred if the standards applied in Title 27, Section 2213 of the D.C. Municipal Regulations were applied to such Person’s failure to satisfy a contractual obligation to District of Columbia; or (F) any Person who is on District of Columbia’s list of debarred, suspended or ineligible Persons; or (G) any Affiliate of any of the Persons described in any one or more of clauses (A) through (F) above.

“**Project**” shall mean the design, construction, furnishing, equipping, and Commissioning of the Hospital and supporting facilities and infrastructure all as described in the Work and this Agreement.

“**Project Budget**” shall mean the total price for the Project which shall not exceed, \$375,000,000,00 and includes all costs of the Project and all costs the District is obligated to expend under this Agreement, including all design, hard construction and general condition costs of the Work. The Project Budget may only be amended in accordance with Section 2.4 of this Agreement and District and federal Law.

“**Projected Payments**” shall have the meaning set forth in Section 4.7(a).

“**RFP**” shall mean a request for proposals.

“**Safety Plan**” shall have the meaning set forth in Section 5.17(a).

“**Schematic Design**” shall mean 35% design to establish the general layout, form and overall appearance of the buildings and site. Such design shall include but not limited to conceptual building plans, preliminary sections and elevations, preliminary selection of building systems and materials, development of approximate dimensions/areas/volumes, perspective sketches, and study models. Program Manager shall assist in coordinating interagency and intergovernmental coordination meetings, including with DCRA and DDOT and other District agencies, as appropriate, in the development of the Schematic Design.

“**Scope of Work**” shall mean all Program Manager obligations set forth in this Agreement.

“**Self-Performed Work**” shall mean work performed by employees of, as applicable, (i) Program Manager; (ii) Contractor; (iii) any entity that is a partner or member of the entity comprising Program Manager or Contractor; (iv) any entity that Controls, is Controlled by, or is under common control with Program Manager or Contractor; or (v) any entity that Controls, is Controlled by, or is under common Control with any entity that is part of Program Manager or Contractor. Self-Performed Work is distinguished from trade work performed by subcontractors unaffiliated with Program Manager or Contractor, as applicable, or the entities of which Program Manager or Contractor, as applicable, is comprised.

“**Substantial Completion**” or “**Substantially Complete**” or “**Substantially Completed**” shall mean the satisfaction of the conditions set out in Section 5.12(b).

“**Substantial Completion Date(s)**” shall mean the date(s) of Substantial Completion for each Phase set forth in Exhibit L, as may be adjusted in accordance with the terms of this Agreement.

“**Tenant**” shall have the meaning set forth in the Recitals.

“**Term**” shall mean the term of this Agreement, which shall be from the Effective Date through, unless otherwise earlier terminated pursuant to this Agreement, the Final Completion of the Project and Final Payment.

“**UHS**” shall mean a Universal Health Services, Inc.

“**Unavoidable Delay**” shall mean an act or event, including, as applicable, an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation; strike, lockout, or other actions of labor unions; failure of power; fuel shortages; inclement weather; a taking by eminent domain; and laws or orders of government or of civil, military, or naval authorities; or any other cause beyond the reasonable control of the Party; so long as such act or event: (i) is not within the reasonable control of the claiming Party; (ii) is not due to the breach of this Agreement by fault or negligence of the claiming Party or Contractor; (iii) is not reasonably avoidable by the claiming Party or Contractor; and (iv) results in a delay in performance by the claiming Party or any Contractor. If any Party to this Agreement claims any extension of the date of completion of any obligation hereunder due to an Unavoidable Delay, it shall be the responsibility of such Party to reasonably demonstrate that the Unavoidable Delay is a proximate cause of the delay.

“**Work**” shall mean any and all work done necessary to complete the Project. The initial requirements for the Work are set forth in Exhibit L.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Program Manager’s Representations and Warranties. Program Manager represents and warrants to District (i) as of the Effective Date and (ii) shall affirm upon each Application for Payment Sections 2.1(a), (b), (d), (e), (f), (g), (h), and (i); provided that for subsection (g) and (i) if Program Manager cannot affirm upon each Application for Payment, Program Manager shall notify District as to why it cannot affirm each such representation and warranty, the following:

(a) Program Manager is a corporation duly created and validly existing pursuant to the laws of Delaware and is qualified to do business in District of Columbia. True, correct and complete copies of the articles of organization of Program Manager have been delivered to District on or before the Effective Date.

(b) Program Manager has full right, power, and authority to enter into, execute, and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by Program Manager and, when duly executed and delivered by District, shall constitute a legal, valid, and binding obligation of Program Manager enforceable against Program Manager in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement does not violate any of the terms, conditions, or provisions of (i) Program Manager’s organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or any Applicable Law to which Program Manager is subject, or (iii) any agreement or contract to which Program Manager is a party or is otherwise subject.

(e) This Agreement and Program Manager's other undertakings pursuant to this Agreement are and will be used for the purpose of developing the Project, and not for speculation in land holding or any other purpose.

(f) No action, consent, or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Program Manager of this Agreement or the assumption and performance by Program Manager of its obligations hereunder, other than the issuance of the Permits and Approvals, and all required governmental permits and licenses.

(g) Neither Program Manager nor any of its members, partners nor shareholders nor the constituent members of any of its members, are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

(h) Neither Program Manager nor any member, partner, shareholder or Affiliate of Program Manager is a Prohibited Person.

(i) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to Program Manager's knowledge, threatened in writing against Program Manager or its members which, if decided adversely to Program Manager or its members: (i) would impair Program Manager's ability to enter into and perform its obligations under this Agreement; (ii) would materially adversely affect the financial condition or operations of Program Manager or its members; or (iii) threaten the legal existence of Program Manager.

(j) Program Manager represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work including, but not limited to, the following: (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Land; (e) the surface and sub-surface conditions generally known to exist in the area in which the Land is located (including the conditions listed in the environmental documents received by Program Manager and set forth in Exhibit D); and (f) the character of equipment and facilities needed prior to and during the performance of the Work. Program Manager shall provide to each Contractor and include the reports and documents in Exhibit D.

2.2. District Representations and Warranties. District represents and warrants to Program Manager, as of the Effective Date as follows:

(a) District has all requisite right, power, and authority to enter into, execute, and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by District and, when duly executed and delivered by Program Manager, shall constitute a legal, valid, and binding obligation of District enforceable against District in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by District does not violate any of the terms, conditions, or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority or Applicable Law to which District is subject, or any agreement or contract to which District is a party or otherwise subject.

(d) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to District's knowledge, threatened in writing against District involving the Land or that, if decided adversely to District, (i) would impair District's ability to perform its obligations under this Agreement; or (ii) would materially adversely affect the financial condition or operations of District.

(e) The documents listed in Exhibit D are the environmental, soil, property condition, and construction reports regarding the nature, condition, and location of the Land that are known and in the possession of District Department of General Services.

2.3. Disclaimer of Warranties. Except as otherwise expressly provided herein, as of the Effective Date, each of District and Program Manager makes no warranty or representation, express or implied, as to the title, value, design, condition, merchantability, or fitness for a particular purpose of the Land or fitness for use of the Land or any portion thereof or any other warranty with respect to the Land. In no event shall District or Program Manager be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

2.4. Limitation of Funds. The Parties recognize that the funds available to complete the Project are set forth in the Project Budget, as amended from time to time in accordance with the terms of this Agreement. Notwithstanding anything herein, the Project Budget may only be amended with the written approval of District. No other funds will be available for the Project unless appropriated by the District.

(a) If the District agrees with a Program Manager determination or the District determines that it is necessary to increase the Project Budget to account for increased costs of the Project, District will seek additional appropriated funds through the District's financial reprogramming, appropriations, or supplemental appropriations processes, or any determined combination thereof.

(b) On the Effective Date, District represents to Program Manager that the Office of the Chief Financial Officer has issued a fiscal impact statement, certifying that funds for the Work as identified in the Project Budget are available.

(c) The Parties acknowledge and agree that Program Manager shall have no obligation to provide any funds for the Cost of the Project.

ARTICLE 3
PROGRAM MANAGER ROLE AND OBLIGATIONS; DISTRICT CONSENTS

3.1. Program Manager Services. As part of the services to be provided by Program Manager under this Agreement, subject to the terms of Section 3.4, Program Manager agrees to provide the following services to District, in addition to such other services to be provided by Program Manager as are specified in this Agreement:

(a) Manage and oversee the design, construction, furnishing, equipping, activating and Commissioning of the Project to Final Completion

(b) Coordinate the activities of the Contractors and provide overall team leadership for the Project in accordance with the terms of this Agreement.

(c) Include all of the provisions set forth in this Agreement that are required to be included in Contracts in each applicable Contract.

(d) Enforce all of the terms of the Contracts in accordance with the terms of this Agreement and oversee and monitor the Work of the Contractors.

(e) Coordinate with all Contractors and request each Contractor to coordinate with the other Contractors working on the Project.

(f) Develop Project specific request for qualifications, advertise the request for qualifications, and solicit qualifications. Program Manager and the District will analyze the responses from bidders and Program Manager will make recommendation of shorted list for receipt of RFP. Develop Project specific RFPs, seek bids from at least three (3) bidders, manage the RFP process, and select and hire, each of the Contractors required to design and construct the Project. Contractors for the Project may include: architectural and engineering design team (architect, mechanical electrical and plumbing engineers, structural engineer, civil engineer, interior designer), construction manager, medical equipment planner, technology planner, food services consultant, and any other consultants necessary. Program Manager will also evaluate the status and/or hire additional consultants, as part of the Cost of the Project, for the Project as may be required, any and all compensation due any such consultant shall be part of the Cost of the Project (and Program Manager shall have no obligation to pay any such compensation with Program Manager's own funds).

(g) Coordinate with key team members, including the District and the District's construction consultant, through regularly scheduled project meetings, to assist on reaching agreement on Project goals and expectations, Project Budget, CPM Schedule, guiding design principles, communication expectations and responsibility and approval levels of authority.

(h) Monitor and update the costs incurred under the Project Budget and CPM Schedule and maintain the accounting of the CPM Schedule and Project Budget (including cash flow requirements) throughout the course of the Project. Program Manager will evaluate and provide feedback to District on each Contractor's price estimates.

(i) Review, evaluate, and sign-off on Contractor applications for payment and provide recommendations for revisions of payment, track commitments and expenditures related to the Project; provided, however, that Program Manager's sign-off on Contractor applications for payment will not be considered a warranty or guaranty by Program Manager of the accuracy or correctness of any such application for payment.

(j) Submit to District a monthly Project status summary report that provides an executive overview of the state of the project with a focus on the progress, CPM Schedule, Project Budget (including an accounting for each Project Budget line item), and key issues requiring action to keep the Project moving forward.

(k) Support, attend, and participate in, with support of the District, required presentations to provide updates to the Project status, zoning and permit discussions and submissions, hearings as needed, and other federal, state and local agency reviews, in accordance with the terms of this Agreement.

(l) Provide medical equipment planning, procurement and information technology consultancy services related to the furniture, fixtures, and equipment and Commissioning of the Project.

(m) Provide, or include in Contract(s), the requirement for Contractors to deliver customary turnover materials upon completion of construction of the Project, including as-built plans and specifications, owner manuals and warranty information. Additionally, customary plans for the transition of the Project from construction to operation and management of the Hospital will be provided under the Operations Agreement.

3.2. Program Manager Role. Program Manager shall perform the Scope of Work consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. Program Manager shall perform its Scope of Work as expeditiously as is consistent with such skill and care and the orderly progress of the Work.

3.3. Enforcement of Contracts. Program Manager shall take all commercially reasonable actions necessary and appropriate to enforce the terms of each Contract, including the Construction Contract(s) and the Architect Contract. To the extent Program Manager reasonably believes it is necessary or the District requests Program Manager to bring an action in court against a non-performing Contractor or the Architect, the cost to bring such action shall be paid by District as a Cost of the Project as and when required to enable Program Manager to enforce any such Contract or the Architect Contract; provided that funds are available in the Project Budget and Program Manager notifies District of such action. If funds are not available in the Project Budget for any such enforcement action, Program Manager shall not be required to bring any such enforcement action. Program Manager shall assist District if District as a third party beneficiary of a contract between Program Manager and Contractor brings an action in court against a non-performing Contractor; provided that funds are available in the Project Budget for any such assistance of District in the enforcement action. In no event shall Program Manager be required to expend its own funds in connection with any such enforcement action.

3.4. Program Manager Not Liable for Actions of Contractors. District understands and agrees that Program Manager does not purport to offer architectural, design, surveying, and

engineering services or installation and construction services (collectively “**Construction Services**”); and that Program Manager is not liable for the means or methods relating to the Construction Services or the Work. Program Manager shall have no responsibility or liability in regard to the performance of any duty by Architect or any Contractor. Nothing in this Agreement shall be deemed to require, or authorize, or permit Program Manager to perform any act which would constitute design services related to the practice of architecture, professional engineering, certified public accounting or law. The recommendations, advice, budgetary information and schedules to be furnished by Program Manager under this Agreement are solely for the use of District and shall not be deemed to be representations, warranties or guarantees. As Program Manager is not a design or engineering professional or licensed contractor, it is expressly understood that Program Manager is not a guarantor nor warrantor nor otherwise responsible, neither expressly nor implied, for the relative quality of the Work, designs, or specifications of those who have or will design or construct the Project, the Cost of the Project or the timely completion of the Project.

3.5. Governmental Authority Permits and Approvals. Program Manager shall include in the Contracts the requirement for Contractors to initiate, lead, and endeavor to obtain the required Permits and Approvals for the Project. District shall assist Program Manager and Contractors to obtain Permits and Approvals required by District’s agencies for the Project.

3.6. District Consent to Form and Substance of Contracts and Amendments. Prior to Program Manager’s execution of a Contract, the Architect Contract or any amendment thereto, including the Construction Contract(s), Program Manager shall provide the form and substance of each Contract or the Architect Contract or amendment to District for input. Program Manager shall obtain District agreement to the final form and substance of each Contract and Architect Contract and any amendments to each Contract and Architect Contract. Any delays directly caused by a District failure to approve any form of Contract, the Architect Contract or any amendment thereto in the reasonable time provided to District for such review and approval, which shall not be less than fifteen (15) days, shall result in an adjust in the CPM Schedule. Program Manager shall endeavor to provide District with advance notice and documents to review of any new Contract or Architect Contract and any amendment thereto as soon as reasonably practical. After the form of Contract or Architect Contract is approved by District, and Program Manager executes such approved form of Contract or Architect Contract, the Program Manager shall be deemed to be in compliance with the requirements to include specific contract requirements in such Contract or Architect Contract set forth in this Agreement.

ARTICLE 4 DESIGN AND-CONSTRUCTION

4.1. Project Plans and Specifications.

(a) Program Manager shall use commercially reasonable efforts to contract with Architect within ninety (90) days of the Effective Date to prepare all architectural plans, working drawings and specifications required to enable Program Manager, or upon hiring of the Contractor, for the Contractor, to obtain permits for the Project pursuant to the terms of this Agreement. The Architect shall be selected by Program Manager with review and input from the District in accordance with Section 3.6. District shall be provided by Program Manager with the ability to participate in interviews and other reviews by Program Manager of the Architect. The Architect Contract shall be on an AIA form (or such other similar form acceptable to Architect, Program

Manager and District) as modified by a contract addendum utilized by Program Manager containing negotiated terms used by Program Manager on its other construction projects and terms consistent with this Agreement. District shall be named as a third party beneficiary of such Architect Contract and approved assignee of Program Manager pursuant to such Architect Contract.

(b) The Architect Contract shall provide that the Architect, with input from the Program Manager and District, shall be required to develop, within seven (7) months after the Effective Date, one or more proposed conceptual designs for each Phase of the Project for review by Program Manager and District. The proposed conceptual designs shall include, but not be limited to, the proposed exterior design, massing and the type and quality of materials that are proposed to be used on the exterior of the Project. The final conceptual design for the Project shall be subject to the approval of both Program Manager and District.

(c) The Architect Contract shall provide that the Architect be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect. The Architect Contract shall provide that the Architect correct or revise errors or deficiencies in any plans at no additional cost. The Architect Contract shall require that all Work shall be prosecuted under the full-time direction of a principal officer or responsible representative of the Architect. The design of architectural, structural, mechanical, plumbing, electrical, or other engineering features of the Work shall be accomplished and/or reviewed and certified by architects or engineers registered to practice in the District of Columbia in the particular professional field involved.

(d) The Architect Contract shall provide that the Architect, with input and cooperation from Program Manager and District, shall develop design documents for the improvement, building shell, location of infrastructure and buildings on the Land, and equipment installation locations for the written approval of Program Manager and District at concept drawings, Schematic Design, Design Development, and at 65% and 100% construction documents for each Phase of the Work. The Architect Contract shall provide that all Architect-submitted designs shall include the estimated cost of the Work based on such designs. District and Program Manager shall return comments on the design documents to the Architect and to each other within fifteen (15) days after receipt of the design documents. In the event either District or Program Manager does not approve the submitted design documents or in the alternative returns the submitted design documents with comments, the Parties shall meet with the Architect in a working session within seven (7) days following a Party's disapproval or return of the design documents with comments, and the Parties agree to use commercially reasonable efforts to address and resolve all comments. The meeting shall occur promptly following receipt of a Party's comments. If the Parties are unable to reach an agreement on the design documents, the Parties shall use the Dispute procedures set forth in Section 10.5, to resolve the dispute concerning the design documents.

(i) The Parties, for each Phase of the Work, shall as part of the approval of the 100% construction documents (or such other percentage agreed to by the Parties) agree on the estimated budget of the Work based on such 100% construction documents (or such other percentage agreed to by the Parties). Following the Parties' mutual approval of 100% construction documents (or such other percentage agreed to by the Parties) and the estimated budget, a copy of the approved 100% construction documents (or such other percentage agreed to by the Parties) for each Phase of the Work (the "**Approved Design**") shall be attached as

an amendment to this Agreement and include an approved budget amount (“**Phase Budget Amendment**”). Each Approved Design for each Phase of the Work will comply with Program Manager’s design and construction standards and the St. Elizabeths Master Design Guidelines (as of the Effective Date located at https://stelizabethseast.com/wp-content/uploads/21087-GL-DRAFT_2012_0605_FINAL_with_appendices.pdf) and will use Program Manager’s standard universal patient room design template. Upon completion of the Approved Design for each Phase of the Work, such Approved Design shall be used to complete the final Plans and Specifications that the Program Manager shall use to bid each Phase of the Work.

(ii) The Parties shall develop the Approved Design (program, design and engineering) for each Phase of the Work, working collectively and in a timely manner to permit the Program Manager to bid each Phase of the Work.

(iii) Any change to the Phase Budget Amendment shall be by Agreement Change Order or Agreement Change Directive, in accordance with the terms of this Agreement.

(e) The Architect Contract shall provide that the Architect shall host design process meetings with District, Construction Consultant, and Program Manager a minimum of once every two (2) weeks or more frequently as may be requested by District until the Parties approve all of the Approved Designs for the all of the Phases of the Work.

(f) At any time prior to Program Manager’s execution of Construction Contract(s), Program Manager or District may propose modifications to the Approved Design (“**Design Modification**”). If either Party desires a Design Modification, the Party requesting the Design Modification shall outline the proposed Design Modification for the other Party. The Architect Contract shall provide for the Architect to develop and submit modified Plans and Specifications clearly showing the changes to the Parties and Construction Consultant, together with an estimate of any cost changes and adjustment to the CPM Schedule resulting from such Design Modification.

(i) All Design Modifications proposed by the Program Manager and agreed to by District or proposed by District and agreed to by Program Manager, shall be memorialized by written agreement signed by the Parties, and Program Manager shall require in accordance with the terms of the Architect Contract, that the applicable Approved Design be updated by Architect to incorporate the Design Modification. If a Design Modification proposed by the Architect or Program Manager is not agreed to by the District, then it shall be of no force or effect.

(ii) If Program Manager does not agree to a Design Modification proposed by District, Program Manager shall provide a detailed written notice to District why it does not agree to the Design Modification. Provided a Design Modification is not Detrimental to the Project, the District may require the implementation of the Design Modification through a directive (“**Design Modification Directive**”) and Program Manager shall require, in accordance with the terms of the Architect Contract, that the applicable Approved Design be updated by Architect to incorporate the Design Modification Directive. To the extent impacted by the Design Modification Directive, the Project Budget and CPM

Schedule shall be adjusted in accordance with the estimates obtained by Program Manager to implement such Design Modification Directive.

(g) The Architect Contract shall provide that the Plans and Specifications for each Approved Design shall comply with all Applicable Laws.

(h) Within ninety (90) days after the execution of the Architect Contract, the Architect, the Program Manager and other consultants hired by the Program Manager shall, with the support of District, prepare a community engagement plan. Before each Approved Design is deemed final, Program Manager shall, with assistance from District, participate in community meetings on the Project, including Advisory Neighborhood Commission meetings to provide information on the then proposed design of the Project and to receive input from the public on the proposed design. The Architect Contract shall provide that the Architect shall participate in such meetings.

4.2. Project Construction Contract(s).

(a) Program Manager shall use commercially reasonable efforts to enter into one or more guaranteed maximum price agreement(s) (the “**Construction Contract(s)**”), for the Project within one-hundred and twenty (120) days after approval of each of the Approved Design(s), or such other earlier period agreed to by the Parties.

(i) Construction Contractor(s) shall be selected by Program Manager with review and input from the District in accordance with Article 3. District shall be provided by Program Manager with the ability to participate in interviews and other reviews of the Contractors by Program Manager. The Construction Contract(s) shall include: a schedule of values, the Approved Design, a guaranteed maximum price, and specific dates of Substantial Completion and Final Completion for each Phase of the Work and such amounts and dates shall be the same amounts and dates set forth in Exhibit L and this Agreement, as amended from time to time, all as set forth in this Agreement.

(ii) The Construction Contract(s) shall be on an AIA form of construction contract as modified by a contract addendum utilized by Program Manager containing negotiated terms used by Program Manager on its other construction projects and terms consistent with this Agreement.

(iii) District shall be named as a third party beneficiary of such Construction Contract(s) and approved assignee of Program Manager pursuant to such Construction Contract(s).

(b) Program Manager shall keep District apprised of Program Manager’s progress in negotiating the Construction Contract(s).

(c) The Construction Contract(s) shall provide that the Contractor has the right to Self-Perform Work for those portions of the Work that Contractor customarily performs, as long as the cost of the Self-Performed Work by Contractor: (i) does not exceed the cost for such portion of the Work that is consistent with at least three (3) bids for the Work and (ii) is consistent with and no more than the price set forth in the Project Budget.

(d) Program Manager shall take all actions necessary or appropriate to enforce the terms of the Construction Contract(s) in accordance with this Agreement.

(e) Each Construction Contract shall provide that the Contractor shall provide to Program Manager and District all subcontracts in excess of Ten Million Dollars (\$10,000,000), including the name of the subcontractor, the scope and the dollar amount of the subcontract at least seven (7) Business Days before such subcontracts are executed.

4.3. Permits and Approvals.

(a) The Construction Contract(s) shall provide that: (i) Contractor shall be responsible for preparing and submitting all of the permit applications that are necessary to obtain the Permits and Approvals required to complete the Project, except as set forth in subsection (c), below; (ii) Contractor shall develop a list of the required permits and shall track the progress of all such permits through the review process; (iii) Contractor shall update Program Manager with the status of each Permit and Approval that is required for the Project; and (iv) Contractor may engage such permit expeditors as Contractor deems appropriate in light of the Project's schedule.

(b) District will assist Program Manager and Contractor, to facilitate and expedite the Permit and Approval process whenever possible.

(c) District, at District's sole cost and expense, shall be responsible for obtaining the Land Use Approvals described on Exhibit M and the CON. Program Manager shall assist District to complete and process the applications and other requirements to obtain such permits and the CON. Program Manager shall request and use commercially reasonable efforts to obtain any additional required Land Use Approvals for the Project, the cost of which shall be included in the Cost of the Project. Program Manager shall invite District to participate in any meetings with Governmental Authorities relating to any Land Use Approvals to be requested by Program Manager. District, in its role as a contracting party, will facilitate and expedite the Land Use Approvals process whenever possible.

4.4. Construction Consultant. District may, at District's option, hire a Construction Consultant (the "**Construction Consultant**") to assist District to (i) review and report to District, before and during the Work, on the construction documents relating thereto, the schedule for construction, and the conformity of such matters to the Approved Design, (ii) report to District as to whether the Work is on schedule, or if not, whether a reasonably satisfactory recovery plan has been adopted and is being implemented, and/or (iii) any other terms required by District. Program Manager agrees that the Construction Consultant shall be afforded the same privileges, notices and access as would reasonably be afforded to District or any construction consultant or advisor of any traditional lender, including, without limitation, being permitted to attend meetings with Program Manager or Construction Contractor(s) and receiving all plans, drawings, change orders and other similar documents. Upon reasonable notice to Program Manager, Construction Consultant and District shall have the right to participate in any tests of the Work performed by Construction Contractor(s). The Construction Contract(s) shall provide that, Contractor promptly furnish all facilities and material reasonably needed for performing safely and conveniently such inspections and health or related tests as may be reasonably required by the Construction Consultant. The Construction Contract(s) shall provide that Contractor replace, or correct Work found by the Construction Consultant not to conform to requirements of the Work unless District consents to accept the Work. The Construction Contract(s) shall provide that that Construction Contractor(s)

maintain an adequate inspection system and permit the Construction Consultant reasonable access to such system. The Construction Consultant shall not be authorized to issue or approve any Agreement Change Directives or Agreement Change Orders on behalf of District, nor shall the Construction Consultant have the ability to render decisions on behalf of District required in connection with this Agreement.

4.5. Preliminary Schedule; CPM Schedule; Project Coordination Meetings; Inspection and Monitoring Rights.

(a) The initial preliminary construction schedule is attached hereto as Exhibit L. The construction schedule and Project Budget shall be updated through an amendment signed by District and Program Manager updating Exhibit L and the dates set forth therein upon (i) approval of the Approved Design, (ii) upon approval of the CON, (iii) upon the execution of the Construction Contract(s), (iv) upon execution of any Agreement Change Order or Agreement Change Directive which amends the construction schedule, and (v) as otherwise specifically set forth in this Agreement. Each update of Exhibit L shall, as necessary, identify any amendment to the dates of Substantial Completion and Final Completion.

(b) Upon approval of the Approved Design for a Phase of the Work and prior to execution of the Construction Contract(s), Program Manager shall submit to District for mutual approval of District and Program Manager an updated preliminary construction schedule with specific details for each phase of the Project, which schedule shall be prepared using the critical path method (“**CPM**”) (such schedule, as it may be amended from time to time in accordance with the Construction Contract(s), shall be referred to as the “**CPM Schedule**”) for use in scheduling and controlling the construction of the Project.

(i) Each amendment of the CPM Schedule in accordance with the terms of this Agreement, shall, to the extent impacted and as necessary, amend the dates of Substantial Completion and Final Completion as set forth in this Agreement; provided that any changes to the Substantial Completion Date and Final Completion Date permitted by this Agreement without the consent of District shall require a notice from Program Manager to District within thirty (30) days after Program Manager has actual knowledge of such event giving rise to a right to revise such dates occurring and such notice shall identify the event giving rise to the revision of time and the revised dates of the Substantial Completion Date and Final Completion Date to become effective.

(ii) The CPM Schedule shall, at a minimum, show:

(A) the early and late start and stop times for each major construction activity;

(B) all “critical path” activities, resources required for these activities, and their duration;

(C) the sequencing of all procurement, approval, delivery and work activities;

- (D) late order dates for all long lead time materials and equipment;
- (E) critical Program Manager/District and Contractor decision dates;
- (F) each estimated date of Substantial Completion; and
- (G) each estimated date of Final Completion for each Phase of the Project (including the Final Completion of the Project).

(iii) Program Manager shall update the CPM Schedule and deliver the CPM Schedule to District monthly prior to the time that the guaranteed maximum price is established for the Project, upon execution of the Construction Contract(s) and monthly thereafter. With each submission to District of the CPM Schedule, the Program Manager shall cause an updated Project Budget to be provided to District for planning purposes.

(c) District and Program Manager recognize the need to maintain clear lines of communications and facilitate timely and coordinated decision-making to implement the Project. To facilitate these objectives, the Parties will hold meetings once every two (2) weeks prior to the commencement of the Work. Following the commencement of the Work, the Parties will continue to meet regularly at least monthly to discuss the status of the Project, and to address any issues that may have arisen since their last meeting. All such meetings shall be scheduled reasonably in advance by Program Manager, with input from the District or can be requested by District through Program Manager.

(d) Following the Notice to Proceed for each Contract, in addition to any applicable District building and health code requirements, District and Construction Consultant shall have the right to enter onto the Land from time to time (but at the risk of District and the Construction Consultant), for the purpose of performing routine inspections in connection with the development and construction of the Project; provided, however, in no event shall District or Construction Consultant interfere with the construction of the Project. Each Contract shall provide that District and/or its representatives will enter onto the Land from time to time, for the sole purpose of undertaking the inspection of the Project to determine conformance to the terms and conditions of this Agreement. Program Manager and Contractors shall have the right to accompany those persons during any such inspections. Program Manager waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Land unless resulting from the gross negligence or willful misconduct of District or its representatives. Any inspection of the Project by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance thereof with any building codes, regulations, standards, or other Applicable Laws; however, if the District and/or any of the its representatives (including, without limitation, Construction Consultant) observe any matters regarding non-compliance with any Applicable Laws, District shall immediately notify Program Manager of the same. For the avoidance of doubt, the rights set forth in this Section are in addition to those rights set forth in Section 3.4. District, after prior written notice to Program Manager, or in the case of an emergency notify Program Manager as soon as practical thereafter, shall have the right to enter the Land to remediate any Hazardous Materials on the Land using funds from the Project Budget or at District's expense from sources other than the

Project Budget. If District enters the Land for purposes of remediation in accordance with this Section, to the extent impacted, the Project Budget (with the written agreement of District pursuant to Section 4.6) and the CPM Schedule shall be adjusted accordingly, in accordance with the provisions of this Agreement. To the extent Project Budget is impacted by such remediation, District, in its sole discretion, may request additional funds through the District's appropriation process. If (i) the Project Budget is utilized for remediation, (ii) District does not appropriate additional funds to replenish the Project Budget and (iii) the remaining Project Budget is Detrimental to the Project, then either Party shall have the right to terminate this Agreement pursuant to the terms of Section 11.3.

4.6. Change Orders to the Work.

(a) *Executed Agreement Change Directive/Change Order Required.* Notwithstanding anything else herein, only a written Agreement Change Directive or Agreement Change Order, approved by the District, may make changes to the Work, Substantial Completion Date, Final Completion Date, or Project Budget in the Agreement; provided that in the case of changes to the Substantial Completion Date and Final Completion Date Program, Manager has the right to make changes to the Substantial Completion Date and Final Completion in accordance with Section 4.5(b) and 4.6(e)(ii).

(b) *Statement to Recognize the Parties Attempt to Limit Change Orders.* The Parties included allowances and contingencies in the Project Budget to attempt to minimize the number of Agreement Change Directives and Agreement Change Orders to complete the Project.

(c) *Statement Related to Mutual Agreement on Change Orders.* The Parties will work in good faith to issue a Change Order pursuant to the mutual agreement of the Parties. However, the District may require Program Manager to issue an Agreement Change Directive in accordance with the terms of this Agreement.

(d) *Process for Issuance of Agreement Change Directives and Agreement Change Orders.*

(i) Program Manager may propose the issuance of an Agreement Change Order. District may request the issuance of an Agreement Change Order or Agreement Change Directive. Program Manager may not issue a Contract Change Directive or enter into a Contract Change Order or Contract Change Directive with Contractor(s), except as provided in this Section 4.6.

(ii) If Program Manager proposes an Agreement Change Order (either on its own initiative or at the request of Contractor), Program Manager shall submit the change order request to the District for the District's approval. The change order request shall include a draft change order and a written statement of all proposed changes in the Contract(s), including, without limitation, any changes to each Substantial Completion Date or Final Completion Date or the change in the Project Budget as a result of the requested Agreement Change Order. Such proposal shall also include Program Manager's analysis of the impact, if any, of the proposed Agreement Change Order on the Hospital, Operating Entity Hospital operations and Operating Entity Hospital profitability. If additional time is proposed, the Program Manager or Contractor shall include a schedule analysis supporting the proposed

extension in the request. The schedule analysis shall include a written narrative explanation. If a change in the maximum amount of the Project Budget is proposed, the statement shall include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. District may request, and Program Manager shall request that the relevant Contractor or Architect provide further cost breakdowns, clarifications, documentation or back-up if District reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data. Any requested adjustment to the maximum amount of the Project Budget shall be limited to increased Cost of the Project due to the Agreement Change Order.

(iii) After Program Manager proposes an Agreement Change Order and provides the required information, District and Program Manager shall work together in an effort to agree on the Agreement Change Order. If District approves the proposed Agreement Change Order (or if Program Manager and District approve a revised Agreement Change Order), Program Manager shall issue the Contract Change Directive or Contract Change Order to the Contractor(s) in a manner consistent with the terms of the Contract(s). If District does not approve the proposed Agreement Change Order, the Program Manager shall not issue the Contract Change Directive or Contract Change Order to the Contractor, and the proposed Agreement Change Order shall be of no force or effect. If the Agreement Change Order requested by Program Manager requires an increase in the Project Budget, such additional amount required to implement the Agreement Change Order shall be paid for by District.

(iv) If District submits a request for an Agreement Change Order, the Program Manager shall, within ten (10) days after receiving the request, provide District with a draft change order and a written statement of all changes in each Contract, including, without limitation, any changes to each Substantial Completion Date or Final Completion Date or the change in the Project Budget, to which it believes it is entitled as a result of the request for an Agreement Change Order. Such written response shall also include Program Manager's analysis on the impact of the proposed Agreement Change Order to the Hospital, Operating Entity Hospital operations and Operating Entity Hospital profitability. If additional time is sought, a schedule analysis supporting the requested extension shall be included. The schedule analysis shall include a written narrative explanation. If a change in the maximum amount of the Project Budget is sought (or if the District has requested a deduct change), the statement shall include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. District may request, and Program Manager shall request that the relevant Contractor or Architect provide further cost breakdowns, clarifications, documentation or back-up if District reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data. Any requested adjustment to the maximum amount of the Project Budget shall be limited to increased Cost of the Project due to the requested Agreement Change Order.

(v) After Program Manager provides the required information identified in subsection (iv) above in response to a request from the District for an Agreement

Change Order, District and Program Manager shall work together in an effort to agree on the scope anticipated in the requested Agreement Change Order. If District and Program Manager approve the Agreement Change Order (or a revised change), it shall be an approved Agreement Change Order, and Program Manager shall issue the Contract Change Directive or Contract Change Order to the Contractor(s), in a manner consistent with the terms of the Contract(s). If the Program Manager does not approve the proposed change(s) and the proposed change(s) in the request for the Agreement Change Order are not detrimental to the Hospital facility, Hospital operations, or Hospital profitability as determined by the Parties (collectively, "**Detrimental to the Project**"), the request for an Agreement Change Order shall be treated as an Agreement Change Directive, and Program Manager shall issue to the Contractor(s) a Contract Change Directive or Contract Change Order in a manner consistent with the terms of the Contract(s). If the Agreement Change Order requested by District or Agreement Change Directive results an increase in the Project Budget, such additional amount required by the Contractor to implement the proposed Agreement Change Order or Agreement Change Directive shall be paid for by District, and if such Agreement Change Order or Agreement Change Directive results in a delay in the CPM Schedule, then the CPM Schedule shall be adjusted by the amount of time required by the Contractor to complete the Work under the proposed Agreement Change Order or Agreement Change Directive. If the Parties cannot agree on whether the proposed change(s) in the proposed Agreement Change Order or Agreement Change Directive is Detrimental to the Project, the Parties shall resolve such Dispute pursuant to Section 10.5.

(vi) An Agreement Change Directive or Agreement Change Order may include deductive Agreement Change Directives or Agreement Change Orders (reducing the Project Budget including the maximum amount of the Project Budget or modifying one or more Substantial Completion Date(s) or Final Completion Date(s) to an earlier date) which will decrease the cost of completing the Work or the time within which it can be completed. Any such deductive Agreement Change Directives or Agreement Change Orders shall not be Detrimental to the Project. If the Parties cannot agree upon (1) whether any deductive Agreement Change Directive or Agreement Change Order is Detrimental to the Project, or (2) the amount of the reduction to the Project Budget or the modification of one or more Substantial Completion Date(s) or Final Completion Date(s) to an earlier date, then the Parties shall use reasonable efforts to resolve the differences as provided in Section 10.5; provided that if such attempt to resolve the differences is unsuccessful, either Party shall have the right to terminate this Agreement as set forth in Section 11.3.

(e) *Process for Program Manager and Contractor(s) Change Orders.*

(i) A Contract Change Order that: (A) is not more than one-million dollars (\$1,000,000) in a single instance; (B) does not at the time of the request, in cumulation with other Contract Change Directives and Contract Change Orders issued by the Program Manager exceed ten percent (10%) of the Contractor or subcontractor total value set at the time of the execution of the Contract; (C) does not impact any Substantial Completion Date or Final Completion Date more than is allocated in such Construction Contract as a time contingency for Contract

Change Orders¹; and (D) does not increase the Project Budget shall not be subject to District approval under this Agreement and Program Manager may execute such Contract Change Order after notice to the District. The Parties agree that Project Budget contingency accounts may be used to pay for Contract Change Orders.

(ii) Contract Change Orders caused by Unavoidable Delays may be executed by Program Manager and Contractor without District's consent, after three (3) Business Days prior notice to District identifying the details of the delay, the impact to the Work, and the actual delay caused by the Unavoidable Delay if: (A) funds are available in the Project Budget contingency account for such Work and (B) such Work is not more than one-million (\$1,000,000) in a single instance to cover the additional cost of the Work. Such Contract Change Order may also delay the applicable Substantial Completion Date or Final Completion Date for so long as such Unavoidable Delay reasonably causes such delay to such portion of the Work; provided that each Contract shall provide for a requirement for the Contractor to notify District of the Unavoidable Delay within fifteen (15) days of an Unavoidable Delay occurring and to use commercially reasonable efforts to mitigate any time delays caused by an Unavoidable Delay.

(iii) *Amendments to Agreement based on Change Order; Failure to Agree.* Except as set forth above in this Agreement with respect to Contract Change Orders that do not require District's approval, prior to execution of a Contract Change Order (on and AIA Change Order form attached to the Contract) by the Program Manager and Contractor, Program Manager will submit such form to District for District's approval as to the changes set forth in the proposed Contract Change Order. If District does not agree that the change(s) in such Contract Change Order is/are justified, the appropriate changes to this Agreement resulting from the proposed Contract Change Order shall be determined pursuant to the Dispute process set forth in Section 10.5; provided that, if Program Manager and Contractor have proceeded through arbitration or an action in court pursuant to the terms of the applicable Contract and the final determination of the arbitrator or court rules that the Contractor is entitled to the proposed Contract Change Order pursuant to the terms of such Contract, District agrees that the terms of such final arbitration, or court ruling shall be binding on District and the CPM Schedule shall be adjusted accordingly and any change to the Project Budget will be subject to District limitations on funding as set forth in this Agreement; provided that in no event shall any such rulings in the aggregate exceed the Project Budget

(f) *Executed Change Orders Final.* Program Manager agrees that any Agreement Change Order executed by District and Program Manager or Agreement Change Directive issued on accordance with the terms of this Agreement constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, and that no further adjustments in compensation or time shall be sought or made with respect to such Agreement Change Order or Agreement Change Directive.

¹ The Construction Contracts will include a time contingency of approximately 45 days.

(g) *Change Orders and Amendments*: Any amendment to any Contract sought by the Program Manager, other than as set forth in subsection (e), shall be subject to the review and approval by District, as set forth in Section 3.6.

4.7. Disbursement of Progress Payments.

(a) The District will make all reasonable efforts to issue Bonds for the Project, within ninety (90) days, or otherwise as soon as possible, of the Effective Date, in an amount sufficient to cover the Project Budget annual cash flow model (set forth in Exhibit L). Funding for the Project Budget will be included in the District's annually approved "Capital Improvement Program" until the Project is completed in accordance with this Agreement. Within thirty (30) days after the Effective Date, the District's Chief Financial Officer shall confirm that adequate funding is included in the District "Capital Improvement Program" to pay for the costs of the Project Budget. District will issue and sell the Bonds on terms determined in the sole and absolute discretion of District and will notify Program Manager when the Bonds are issued and the amount of the Bonds. Upon issuance of such Bonds, District shall provide to Project Manager the trust indenture or other similar document that identifies the total principal amount that identifies the total principal amount of such Bonds and the relevant repayment terms of such Bonds. Program Manager shall submit to District an initial schedule of expected Costs for the Work and schedule of projected progress payments ("**Projected Payments**") within fifteen (15) days after the execution of the initial Contract. Cost of the Project must articulate capital eligible items in alignment with the capital eligibility guidelines set forth in Exhibit B.

(b) Upon receiving the proceeds of the sale of the Bonds, District shall immediately pay or cause a Bond trustee that is party to the Bond trust indenture to pay the bond issuance costs to the appropriate payees; and to cause the Bond trustee selected by District's Chief Financial Officer to establish the necessary Bond trust funds, accounts, and subaccounts and to hold and disperse such Bond net proceeds to Program Manager or its designees pursuant to this Agreement and in accordance with the Bond trust indenture. District will deliver the account balance amount to Program Manager within seven (7) Business Days upon Program Manager's request.

(c) District shall, within thirty (30) days after the Effective Date, fund the project in a sufficient amount to pay for the Cost of Work identified in the CPM Schedule up to ten million dollars (\$10,000,000.00).

(d) Program Manager shall on a monthly basis identify the Projected Payments to District and District shall cause the Bond trustee to retain at least six (6) months of Projected Payments in the Bond project fund, and to invest the balance of the Bond net proceeds in high quality, highly liquid investments, in accordance with District's internal Cash & Investment Management Investment Policy.

(e) District agrees to pay to Program Manager and Program Manager agrees to accept from District the payments identified in this Section 4.7, subject to and in accordance with the terms of this Agreement, and the Bond trust indenture.

(f) In order for Program Manager to receive payment for the Cost of the Project, Program Manager shall deliver to District the Contractor's Application for Payment in the form attached hereto as Exhibit C ("**Application for Payment**"). The Application for Payment shall include Contractor's job cost ledgers in a form reasonably satisfactory to District, Contractor's,

subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form reasonably acceptable to District, and such other supporting documentation as District may reasonably request Each Application for Payment shall also include:

(i) written waivers of the right to file a mechanic's lien and all other claims, in a form substantially similar to Exhibit G, for Contractor and all subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If District so requests, Program Manager shall or shall require Contractor to submit unconditional waivers of liens for itself and all subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under this Agreement, and providing final release of such liens, if applicable; and

(ii) detailed documentation of costs as a condition to approving progress payments, but Contractor shall nevertheless maintain complete documentation of the costs including:

(A) The Cost of the Project completed to date;

(B) Current approved estimated amount for the upcoming Work based on the Project Budget, as the same may be amended as provided in this Agreement;

(C) Minus applicable retainage (10% retainage through 50% Substantial Completion and 5% thereafter);

(D) Minus amounts previously paid by District.

(g) District shall not be required to pay for materials stored at the site or stored at other locations absent prior written authorization by Program Manager to do so. For materials stored at the site but not yet incorporated into the Work, the Application for Payment may also include a request for payment of the cost of such materials, if the materials have been delivered to the site, and suitably stored. Such requests shall be documented by appropriate invoices and bills of sale. Payment for stored materials shall be conditioned also on Contractor's representation that it has inspected the material and found it to be free from defect and otherwise in conformity with this Agreement, and on satisfactory evidence that the materials are insured under the builder's risk policy.

(h) Program Manager shall not collect or be paid a fee for Program Manager's or any Affiliate's work under this Agreement. Program Manager shall not be paid for any Self-Performed Work performed by Program Manager. Program Manager shall not be required to perform any Self-Performed Work in connection with the Project.

(i) Program Manager shall not include in an Application for Payment amounts for Work for which Program Manager does not intend to pay to the Contractor from such Application for Payment. Each Application for Payment shall be signed by Program Manager stating that the

Program Manager reviewed and submitted the Contractor's payment application with a Contractor certification that includes:

(i) all amounts paid to Program Manager on the previous Application for Payment that were attributable to Contractor and subcontractor Work or to materials or equipment being supplied by any supplier have been paid over to the appropriate subcontractors and suppliers in accordance with the requirements of the contracts signed by such entities;

(ii) that all amounts currently sought by Program Manager for Contractor or Contractor's subcontractor Work or supply of materials or equipment are currently due and owing to the Program Manager for Contractor or Contractor's subcontractors and material or equipment suppliers (subject to the exception set forth in subsection (a));

(iii) that all Work, materials or equipment for which payment is sought is, to the best of Contractor's knowledge, free from defect and meets all of the requirements set forth in the Agreement; and

(iv) that Contractor's subcontracts include the clauses required by subparagraphs (1) through (5) of D.C. Official Code § 2-221.02(d) (2017).

(j) Program Manager shall not cause to be placed and shall include in the Construction Contract that no Contractors or subcontractors or any other laborers shall not place or cause to be placed any encumbrances on any portion of the Project or covering any portion of the Work (Program Manager shall include this restriction within the terms and conditions of each Contract including the Construction Contract(s)). By submitting an Application for Payment, Program Manager shall or shall require Contractor to warrant to District that title to all Work for which payment is sought will pass to District, without liens, claims, or other encumbrances, upon the receipt of payment by Contractor. District may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with Contractors until Substantial Completion, unless otherwise agreed by District, in writing.

(k) On the fifteenth (15th) day of each month Program Manager shall submit to District an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. If District is unable to agree on the amounts properly due and owing, District may withhold payment from the Application for Payment in accordance with its good faith determination and Program Manager may protest and pursue a claim as a dispute as provided in Section 10.5 of this Agreement.

(l) Upon receipt of an Application for Payment with the necessary documentation, as set forth in this Agreement, the District (through the Department of General Services) will review the Application for Payment within seven (7) Business Days and within such seven (7) Business Day period either approve the Application for Payment or return the Application for Payment to the Program Manager with a request for additional information and any necessary adjustments. Once adjustments have been made by the Program Manager, or the applicable Contractor, the Program Manager shall resubmit the Application for Payment and the process above shall be followed until the issues identified by District to Program Manager are resolved. If such requests do not obtain District (through the Department of General Services) approval of the review of the

Application for Payment, the request will be reviewed by District (through Department of General Services Deputy Director, Capital Construction) for the issue to be resolved within seven (7) Business Days and if the issue is not resolved between the Parties within such period the Parties shall proceed through the dispute process in Section 10.5. Following approval of the application for Payment by District Department of General Services, as provided above, within three (3) Business Day thereafter District shall forward the relevant documentation to the District Office of Chief Financial Officer (“OCFO”) and upon receipt by the OCFO from the District Department of General Services (with all relevant documentation relating to the Application for Payment, as set forth in this Agreement), the OCFO shall cause payment to be made to the Program Manager within seven (7) Business Days following the OCFO’s receipt of the Application for Payment approval from District Department of General Services, as provided above. District may withhold payment, in whole or part, as appropriate, if:

(i) the Work is defective and such defects have not been remedied; or

(ii) District has determined that progress has fallen materially behind the dates identified in the CPM Schedule, as amended from time to time as provided in this Agreement, not due to the acts or omissions of District or Unavoidable Delays, and Contractor or Program Manager fails, within ten (10) days of District’s written demand, to provide District with a realistic and reasonably acceptable remedial plan; or

(iii) Program Manager’s monthly schedule update reflects that Contractor has fallen materially behind the dates identified in the CPM Schedule, as amended from time to time as set forth in this Agreement, not due to the acts or omissions of District or Unavoidable Delays, and Contractor or Program Manager fails to include, in the same monthly report, a realistic and reasonably acceptable remedial plan; or

(iv) Program Manager has failed to provide reports due from Program Manager in compliance with this Agreement and not remedied such failure within thirty (30) days of Program Manager’s receipt of written notice from District; or

(v) Program Manager has failed to pay Contractor or Program Manager has failed to enforce the Contract to require Contractors to pay subcontractors after receipt of funds from District for amounts that are not in dispute, or Contractor has made false certifications in an Application for Payment that payments to subcontractors or suppliers are due or have been made which is not remedied within thirty (30) days after Program Manager’s receipt of written notice from District; or

(vi) any mechanic’s lien has been filed against District, the site or any portion thereof or interest therein, or any improvements on the site, even though District has paid all undisputed amounts due, and Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within thirty (30) days after Contractor’s receipt of such notice from District; or

(vii) Program Manager is otherwise in substantial breach of this Agreement beyond the applicable notice and/or grace period; or

(viii) the Application for Payment is materially incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by District in accordance with the terms of this Agreement.

(m) Payment of any Progress Payment or Final Payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to this Agreement, or a waiver of any rights or remedies District may have with respect to defective or nonconforming Work.

(n) District shall have no obligation to pay or be responsible in any way for payments directly to a Contractor's consultant or subcontractor performing portions of the Work.

(o) Final Payment shall be made by District to Program Manager when: (i) Final Completion has been achieved; (ii) all deliverables required in this Agreement have been delivered to and are accepted by District; (iii) Program Manager provides District a complete set of product manuals (O&M), training videos, and warranties, as applicable; and (iv) a complete final Application for Payment and a final accounting for the Cost of the Project have been submitted by Program Manager and reviewed by District and, to the extent District determines appropriate, District's accountants. District shall make Final Payment not more than thirty (30) days after District verifies the amount of the final payment set forth in a complete final Application for Payment.

(p) The amount of the "**Final Payment**" shall be calculated as follows:

(i) Take the sum of the Cost of the Project substantiated by Program Manager's final accounting; but not more than the Project Budget, as the same may be amended from time to time as provided in this Agreement

(ii) Subtract amounts, if any, for which District has withheld pursuant to the terms of this Agreement, if any.

(iii) Subtract the aggregate of previous payments made by District.

(q) District will review Program Manager's final accounting within thirty (30) days after delivery of the final accounting to District by Program Manager. Based upon District's determination of the Cost of the Project in accordance with the terms of this Agreement and provided the other conditions of this Section 4.7 have been met, District will, within fifteen (15) days after District's determination, notify Program Manager of any amount that District will withhold, if any, and the reasons therefor. The time periods stated in this Paragraph supersede those for typical progress payments.

(r) Program Manager shall pay (where District pays the Program Manager and not the Contractor directly) all Contractors, Architect and any other contractor within seven (7) Business Days of receipt of payment from District. Each Contract shall include a clause that all Contractor subcontractors and vendors shall be paid by Contractor within seven (7) Business Days of Contractor's receipt of payment.

4.8. Bid Process.

(a) In addition to the requirements set forth in Section 3.6 and Section 5.13, the Program Manager and each Contract shall provide that Contractors (and each major subcontractor

under the such Contracts) shall use commercially reasonable best efforts to solicit at least three (3) qualified and bona fide bids for each trade package that has an expected cost in excess of One Hundred Thousand Dollars (\$100,000). Trade packages shall not be parceled, split or divided to avoid such threshold amount. In addition to the information normally required in such bids, each Contract shall also require Contractors and its subcontractors to provide an estimate of the percentage of labor hours to be performed in completing the subcontracted work which will be performed by District residents. The Program Manager and each Contract shall provide that Contractors shall carefully document the procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, Contractor's evaluations of all bids, and the basis for each Contractor's recommendation as to which bidders should be chosen. District shall be afforded access to all such records at all reasonable times so that, among other things, it may independently confirm adherence to all requirements set forth in this Agreement. District shall provide reasonable assistance to Program Manager and/or Contractor(s) with respect to the preparation of the request for proposals related to First Source Employment Agreement, project labor agreement, CBE and other District requirements set forth in this Agreement.

(b) As part of the negotiations leading up to the Project Budget, Program Manager shall provide to District tabulations of the trade bids solicited and copies of all trade bids. In general, the bid tab shall be presented in tabular format that compares the bids received and any other relevant information (i.e. exclusions, past performance history, etc.). The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. To the extent that Program Manger's award recommendation is based on scoping adjustments, the Program Manger shall clearly identify the scoping adjustment and the need for such adjustments. Such bid tabulation shall include CBE utilization information in addition to price and other information. Such bid tabulations as well as copies of the bids shall be submitted to District and Construction Consultant. Program Manager represents and warrants that, to Program Manager's knowledge, the bid tabs so submitted shall fairly represent the results of Contractors and subcontractor bidding process.

ARTICLE 5 CONSTRUCTION OF THE PROJECT

5.1. Performance and Payment Bond; Development. Notwithstanding anything to the contrary in this or any other agreement, Program Manager shall not authorize construction of the Project until Contractor posts a 100% performance and payment bond for the applicable Phase from a surety authorized to do business in the District and listed on the U.S. Treasury's listing of approved sureties with a multi-obligee rider naming District as an assured and in such a bond's customary form for District projects (the "**Performance and Payment Bond**") and delivering such executed Performance and Payment Bond to the District.

5.2. Conditions to Commencement of Construction.

(a) In addition to the requirement set forth in Section 4.1, unless otherwise waived by District or Program Manager, as applicable, each of the following conditions shall have been satisfied prior to Program Manager authorizing Contractor's commencement of the Work.

(i) *Project Budget.* The Parties have incorporated the Project Budget into the financial analysis of the Project mutually agreed upon between the Parties. The Architect Contract shall require Architect to update the line items in the Project Budget throughout the design process

identified in Section 3.1 and the updated proposed amendments to the Project Budget shall be submitted to District within thirty (30) days of the Parties' approval of Approved Design. Upon request from the District, Program Manager shall promptly provide an accounting of the status of the expenses incurred by line item under the Project Budget.

(ii) *Project Budget.* The limit on the total Project Budget can only be amended as set forth in Section 2.4.

(iii) *Land Use Approvals.* The Land Use Approvals and CON for the Project have been obtained in accordance with Applicable Laws and this Agreement and such Land Use Approvals and CON shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Project.

(iv) *Permits and Approvals.* Contractor shall have obtained the Permits and Approvals necessary for Contractor to commence construction of the Project in accordance with Applicable Laws and this Agreement and such Permits and Approvals shall be in full force and effect and shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Project.

(v) *Project Plans.* The Approved Design shall have been submitted to and approved by District and Program Manager in accordance with Article 4.

(vi) *Documents from Program Manager.* Program Manager shall have delivered, or caused to be delivered, to District each of the following items, all of which must be reasonably acceptable to District:

- (A) Copies of all organizational documents of Program Manager;
- (B) A certificate of good standing evidencing that Program Manager is in good standing and authorized to transact business in District of Columbia;
- (C) Certificates of insurance as required under Article 10 for the commencement of the construction of the Project;
- (D) A certificate with the representation and warranty from Program Manager that, in the reasonable expectation of Program Manager, the Project Budget is sufficient to construct and complete the Project in accordance with the Plans and Specifications; provided, however, that Program Manager shall have no liability with respect to any such certificate;
- (E) A Certificate of "Clean Hands" for Program Manager and Contractors from the Office of Tax and Revenue;
- (F) Performance and Payment Bond(s); and
- (G) An updated CPM Schedule.

(vii) *Issuance of Bonds.* The Bonds shall have been and will be issued in accordance with the schedule set forth in Section 4.7(a).

(b) The construction Work shall not commence until District issues a Notice to Proceed for each Phase of the Project.

(c) If each of the conditions set forth in this Section 5.2 have not been satisfied in full on or before twenty-four (24) months after the Effective Date, either Party, only to the extent such condition(s) that is not satisfied is not within the sole control of such Party, may terminate this Agreement by providing thirty (30) days prior written notice to the other Party. In addition, if District does not issue a Notice to Proceed for any Phase of the Project within sixty (60) days after the date that the Plans and Specifications for such Phase of the Project are approved by District and Program Manager, then either Party may provide notice to the other Party that after thirty (30) of receipt of such second notice if the Notice to Proceed is not issued by District this Agreement will be terminated pursuant the terms of Article 11 of this Agreement.

5.3. Program Manager's Obligations regarding Construction of the Project.

(a) Following the commencement of construction, each Construction Contract shall provide that the applicable Contractor shall reach Substantial Completion and Final Completion of the Project in accordance with, and subject to, the terms and conditions of each applicable Contract. Each Construction Contract shall provide that Contractor shall perform or provide, or shall cause to be performed or provided, all means, methods, techniques, sequences, procedures, equipment and labor necessary or appropriate to carry out and fully and finally complete the Project in accordance with this Agreement. The applicable Contractor(s) shall prosecute Construction Contract(s) and other Contractor contracts including furnishing, equipping, and Commissioning of the Project with diligence and continuity to completion of the Work, subject in all cases to Unavoidable Delays. Each Construction Contract shall provide that the applicable Contractor shall be solely responsible for funding all overruns if the actual hard or soft costs of the Project are greater than indicated in guaranteed maximum amount of the Construction Contract(s) as set forth in the Project Budget upon execution of the Construction Contract(s), as may be amended as set forth herein, and any such overruns shall not excuse Contractor from fully and finally achieving Substantial Completion and Final Completion of the Project in accordance with, and subject to, the terms and conditions of the applicable Construction Contract.

(b) If, after Contractor has commenced construction, the applicable Contractor fails to diligently prosecute construction of the Project, subject to Unavoidable Delays, and such failure continues for thirty (30) consecutive days after Contractor's receipt of notice of such failure, District shall, as its sole remedies under this Agreement, have the right (i) to require Program Manager to enforce a collateral assignment of liquidated damages in the Construction Contract(s), (if liquidated damages are included in the Construction Contract(s)), (ii) to pursue any remedies that may be available to District under any other applicable agreement between Program Manager and District or Program Manager and Contractor, (iii) to pursue any remedies that may be available to District or request Program Manager pursue any rights it may have under the Performance and Payment Bond, including collection of a lump sum payment where such funds will be used to complete the Project (iv) District, to the extent District is not a third party beneficiary of each Contract and Architect Contract with a right to enforce such Contract or Architect Contract in accordance with this section, shall be granted a power of attorney by Program Manager and shall have the right to prosecute such enforcement in the name of the Program Manager and Program Manager agrees to provide its commercially reasonable cooperation to District if District prosecutes the enforcement in the Program Manager's name; and (v) to seek, either directly or

through Program Manager, such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause the diligent and continuous prosecution of construction of the Project by Contractor, it being understood that construction of the Project is a material inducement to District to enter into this Agreement and monetary damages shall be inadequate to compensate District for harm resulting from such failure. Each Contract and Architect Contract shall include a clause requiring the District to be a third party beneficiary of each Contract and Architect Contract and include a right for District to enforce each Contract and Architect Contract against the Architect and Contractors, as applicable.

5.4. Compliance with Applicable Laws, Land Use Approvals and Permits and Approvals. Each Contract and Architect Contract shall provide that Contractors and Architects shall use commercially reasonable efforts to obtain all Permits and Approvals and Certificates of Occupancy, and any other permits or approvals required from any governmental agency or department, except for those set forth on Exhibit M and the CON. Each Contract shall provide that Contractors shall construct the Project in accordance with Applicable Laws, the Land Use Approvals, and the Permits and Approvals. Further, construction of the Project shall be carried out pursuant to the Plans and Specifications, as the same may be amended from time to time in accordance with the terms of this Agreement.

5.5. Utilities. Each Contract shall provide that Construction Contractors shall be responsible under the Construction Contract(s) for handling all aspects associated with utilities affecting the Project including, without limitation, paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Project and the Land.

5.6. Davis-Bacon Act. Program Manager acknowledges that the construction work performed under this Agreement shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The Davis-Bacon provisions, procedures and wage rates applicable to this Project are attached as Exhibit J. Each Contract shall require that Contractor and all of its subcontractors shall comply with Exhibit J.

5.7. Green Building Act. Each Contract shall provide that Contractors shall comply with the District of Columbia Green Building Act, as amended.

5.8. Apprenticeship Act. Each Contract shall provide that Contractors shall comply with the applicable requirements of the D.C. Apprenticeship Act, D.C. Law 2-156, as amended, and shall implement all applicable terms and conditions of the D.C. Apprenticeship Council's Rules and Regulations.

5.9. Project Labor Agreement. Each Contract shall provide that Contractors shall to enter into a project labor agreement meeting the requirements of D.C. Official Code § 2-356.06. Prior to entering into such project labor agreement, Contractors shall submit the draft agreement to District for District's review to confirm satisfaction of the requirements of D.C. Official Code § 2-356.06.

5.10. Utilization of District Businesses. Each Architect Contract and Contract shall provide that Architect and Contractors shall, within ninety (90) days after the effective date of such Contract, enter into a CBE Utilization Agreement with the District within ninety (90) days after the effective date of each Architect Contract and Contract, that shall govern certain obligations of each Architect and Contractors regarding the utilization of certified business enterprises

("CBEs") in the operation of the Project. Throughout the operation of the Project, Architect and Contractors shall be required to submit to the District copies of any reports required to be submitted under the CBE Utilization Agreement. Each Architect and Contractor shall also submit to the District such other reports as the District may from time-to-time require regarding the value of contracts awarded to CBEs (generally and by type of certification) in connection with the operation of the Project.

5.11. Hiring of District Residents. Each Architect Contract and Contract shall provide that Architect and Contractors shall, within ninety (90) days after the effective date of such Contract, enter into a First Source Employment Agreement with the District that shall govern the obligations of Architect and Contractors and subcontractors regarding job creation and employment related to the Contractor's contract, pursuant to the First Source Act. Each Architect Contract and Contract shall provide that Architect and Contractors shall submit such reports as the Project Manager or District from time to time may require regarding the hiring of Washington, D.C., residents.

5.12. Substantial Completion and Final Completion of Construction of the Project.

(a) Subject to Unavoidable Delay, each Contract shall provide that Contractors shall achieve:

(i) Substantial Completion of each Phase of the Work by no later than the Substantial Completion Date, as the same may be amended from time to time in accordance with the terms of this Agreement; and

(ii) Final Completion of each Phase of the Work and Final Completion of the Project by no later than the Final Completion Date, as the same may be amended from time to time in accordance with the terms of this Agreement.

(b) To establish Substantial Completion, each Construction Contract shall provide that the Contractor shall furnish to District and Program Manager the following (collectively the "Certificate of Substantial Completion"):

(i) a certification of Contractor that, to Contractor's knowledge, construction of the specific Phase of the Work has been Substantially Completed in accordance with the final Plans and Specifications (and includes the furniture fixtures and equipment and other items necessary to be operate the Hospital in accordance with the Operations Agreement, if applicable);

(ii) a certification of the Architect (certified to District on the standard AIA Form of Certificate of Substantial Completion, AIA Form G 704), that it has examined the final Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Phase of the Work has been Substantially Completed in accordance with the final Plans and Specifications and, as constructed, the Work complies in all material respects with the local building codes;

(iii) copies of the Certificates of Occupancy for substantially all of the Phases of the Project for which certificates of occupancy are legally required, issued by DCRA. To the extent such Certificates of Occupancy are temporary or conditional, Program Manager shall forward copies of the final Certificates of Occupancy for the Project within six (6) months after Substantial

Completion of the Project; provided, however, such date shall be extended if Program Manager or Contractor is using its reasonable efforts to secure such final certificates; and

(v) a certification signed by Program Manger that it agrees with Contractor's certification; and

(vi) a certification signed by the District that it agrees with Program Manager that Contractor has achieved Substantial Completion.

(c) Following each Phase of Substantial Completion, Program Manager shall as part of the Architect Contract require Architect to furnish District with (i) a complete set of "as built" Plans and Specifications with all addenda thereto and Agreement Change Orders, Agreement Change Directives, Contract Change Orders and Contract Change Directives with respect thereto (which requirement may be satisfied by the delivery of such documents in electronic format) and (ii) copies of full lien waivers in form and substance reasonably satisfactory to District from each Contractor and each major subcontractor in connection with the construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the construction Phase of the Project, to the extent that District has paid the applicable amounts due.

5.13. Subcontracting and Administration.

(a) Each Architect Contract and Contract shall provide that Architect and Contractors shall enter into a written agreement with each subcontractor. All or substantially all of the Work will be carried out by Architect and Contractors and each Architect and Contractor's trade subcontractors, and those trade subcontracts will be awarded through the competitive bid process.

(b) Each Architect Contract and Contract shall provide that Architect and Contractors shall develop a purchasing strategy to address the Project Budget, the CPM Schedule and conditions of this Project and shall include appropriate provisions in the subcontracts to minimize the cost impact associated with such conditions. Such strategies may include, but are not limited to, (i) obtaining from subcontractors unit price quotes for typical coordination items; (ii) setting aside allowances for coordination work; and (iii) such other techniques as may be employed by Contractor.

(c) Each Architect Contract and Contract shall provide that Architect and Contractors shall carefully document its procedures for making available bid packages to potential bidders, the contents of each bid package, discussions with bidders at any pre-bid meetings, bidders' compliance with bid requirements, all bids received, Program Manager or Architect and each Contractor's evaluations, as applicable, of all bids, and the basis for Program Manager or each Architect and Contractor's recommendation, as applicable, as to which bidders should be chosen. District shall be afforded reasonable access to all such records at all reasonable times so that, among other things, it may independently confirm Architect and each Contractor's adherence to all requirements set forth in the Agreement including subcontracting requirements.

(d) Program Manager may, in its sole discretion, reject any or all bids and proposals received for any bid package, and may include in each Architect Contract and Contract that Architect and Contractors obtain new or revised bids or proposals, with respect to any subcontractor who (i) was not previously approved by Program Manager, or (ii) failed to submit a

complete proposal. The Architect Contract and Contract shall require each Architect and Contractor to permit Program Manager to review the form of any subcontract or agreement with a material supplier to ensure that such contract incorporates the applicable contractual provisions required by this Agreement.

(e) Each Architect Contract and Contract shall provide that Architect and Contractors shall include in all subcontracts the provisions set forth in Exhibit K.

5.14. Written Monthly Reports. Each Contract shall provide that Contractors shall provide written reports to Program Manager and District on the progress of the entire Work at least monthly, by the fifteenth day of each succeeding month, from the Effective Date until Final Completion of the Project. Such written report shall include the following elements:

(a) construction progress update and a critical path method schedule, including any plans to correct defective or deficient work or for time lost due to delays;

(b) a cost report identifying the Construction Contract(s) guaranteed maximum price line item, the original line item amount, approved, pending, and projected Contract Change Order amounts, the cost incurred to date, the projected cost to complete the Work of the line item, and any variance between the actually approved budgeted balance of the line item and the projected cost to complete;

(c) a detailed summary of Program Manager's and each Contractor's efforts and results with respect to the economic inclusion goals set forth in this Agreement including: (i) Contractor's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to CBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals;

(d) a detailed summary of the steps that are being employed to ensure quality construction and workmanship from each Contractor. Each report shall specifically address issues that were raised by District and/or its Construction Consultant during the prior month and outline the steps that are being taken to address such issues;

(e) updated progress photos from the Contractors that shall detail changes in the Work during the month; and

(f) a summary of the daily log of the Contractors containing a record of weather, subcontractors working on the Project, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as District may reasonably require.

5.15. Warranties. Each Contract shall provide that Contractors shall warrant to Program Manager and District that materials and equipment furnished under the Construction Contract(s) and other relevant contracts will be of good quality and that for the one (1) year period following the Substantial Completion Date the Work will be free from defects not inherent in the quality

required or permitted, and that the Work will conform to the requirements of the Agreement. Contractor's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear from normal usage. Program Manager shall use commercially reasonable efforts to schedule a joint inspection of the Work during the eleventh (11th) month after Substantial Completion is achieved. During such inspection, Program Manager, Contractor and a representative of District shall walk the Project to identify any necessary warranty work which the Contractor shall repair in a timely manner.

5.16. Open Book Reporting. Architect Contract and each Contract shall provide that Architect and Contractors shall maintain an open book reporting system with District, allowing District or its consultants access Program Manager, Contractors and each Contractor's subcontractors and material suppliers, invoices, purchase orders, records for Work, and other relevant documentation and sources of information concerning the Work or costs. Each Contract shall require Contractors to utilize an electronic Project Management Information System (PMIS) of its own choosing and allow District and the Construction Consultant reasonable access to the PMIS platform.

5.17. Site Safety and Clean-Up.

(a) Each Contract shall provide that Contractors shall provide a safe and efficient site, with controlled access. As part of this obligation, each Contract shall require Contractors to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Prior to the start of construction activities, Contractors shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the "**Safety Plan**"). This Safety Plan developed by a Contractor shall describe the proposed separation and the specific nature of the safety measures to be taken including fences and barriers that will be used as well as the site security details. The Safety Plan shall be submitted to District for their review and approval prior to the commencement of construction. Once the Safety Plan has been approved, each Contract shall provide that Contractors shall comply with it at all times during construction. The Architect Contract shall require Architect to comply with the Safety Plan.

(b) As part of its responsibility for Project safety, each Contract shall provide that Contractors shall install such fences and barriers as may be necessary to separate the construction areas of the Land from those areas that are then being used by District for other purposes. Contractor shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

(c) Each Contract shall provide that Contractors shall be responsible for site security and to provide such security staff and security measures as are necessary to protect the site from unwanted intrusion.

(d) The right of District to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve Contractor from the obligation to maintain a safe site.

5.18. Buy American Act Provision. Each Architect Contract and Contract shall provide that Architect and Contractors shall comply with the provisions of the Buy American Act (41 U.S.C. §

10a) as set forth below including 48 CFR Section 52.225-11 (Buy American – Construction Materials under Trade Agreements Oct 2019) which is incorporated herein by reference:

(a) Only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Construction Contract, except for materials for which an exception applies and a waiver has been granted.

(b) A construction material is any article, material or supply brought to the construction site for incorporation in the building or work. To be considered domestic:

1. Unmanufactured construction materials must be mined or produced in the United States.

2. Manufactured construction materials must be manufactured in the United States and the cost of components mined, produced or manufactured in the United States must exceed 50% of the cost of all components (the Component Test). Components of foreign origin of the same class or kind as those listed at Federal Acquisition Regulation (FAR) 24.104 are treated as domestic for the purposes of the Component Test. The Component Test is waived for commercially available off-the-shelf (COTS) items.

(c) The Contractor may submit a written request for an exception to the Buy American Act requirements on the basis that 1) a construction material is not produced or manufactured in the United States in sufficient quantity of a sufficient quality; 2) acquisition of a construction material would be against public interest; or 3) the cost of the construction material would be unreasonable. The request must explain why the Contractor could not have reasonably foreseen the need for, and could not have requested, the exception before bid closing. If the District determines that the explanation is satisfactory, the District will make a determination of whether an exception to the Buy American Act applies.

5.19. Partnering.

(a) The terms “partnering” and “partnership” used herein shall mean a relationship of open communication and close cooperation that involves both District and Program Manager personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve Agreement objectives and resolve issues and implementing actions as required.

(b) Partnering will be a commitment mutually agreed upon by at least District and Program Manager, and preferably Contractor, subcontractors and the architect and engineer design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) District intends to facilitate contract management by encouraging the foundation of a cohesive partnership with Program Manager, Contractor, its subcontractors, the architect and engineer design contractor, and District’s staff. This partnership will be structured to draw on the strengths of each entity participating to identify and achieve

mutual objectives. The objectives are intended to complete the Agreement requirements within the Project Budget and on schedule.

(d) To implement the partnership, within thirty (30) days after each Notice to Proceed, Program Manager's personnel, its contractors, including the architect and engineer design contractor, and District personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of this Agreement as mutually agreed to by District and Program Manager.

ARTICLE 6 COVENANTS OF DISTRICT AND PROGRAM MANAGER

6.1. Covenants of District. District covenants and agrees as follows:

(a) District shall provide Contractors with reasonable assistance with respect to Contractors' requirement to use commercially reasonable efforts to obtain all Permits and Approvals (except as set forth in Exhibit M and the CON for which District is responsible) and Certificates of Occupancy, and any other permits or approvals required from any agency or department of District for the Project; provided that all applications for such Permits and Approvals and Certificates of Occupancy, and any other permits and approvals are in compliance with Applicable Laws. District makes no representation or warranty that its assistance or participation will assure the issuance of any such Land Use Approvals, Permits and Approvals, Certificates of Occupancy, or and any other permits and approvals. Except as otherwise specifically provided in this Agreement, nothing in this Section shall require District to incur any out-of-pocket cost not included in the Project Budget in providing assistance to Contractors or Program Manager.

(b) District will provide Program Manager and Contractors access to the Land for the purpose of Program Manager's and Contractor's performance of the services and other obligations set forth herein.

6.2. Covenants of Program Manager. Program Manager covenants and agrees as follows:

(a) ***Maintenance of Entity.*** Program Manager shall maintain its authority to transact business in District of Columbia and its good standing under the laws of its formation.

(b) ***Compliance With Applicable Law.*** Program Manager shall comply with all Applicable Laws in connection with its obligations under this Agreement. In connection with the construction, design and development of the Project, the Architect Contract, each Contract including the Construction Contract(s) shall require Contractor(s) and Architect, as applicable to comply, respects, with all Applicable Laws in connection with its obligations under the Architect Contract and Contract(s). If Program Manager becomes aware or is notified in writing that any construction work on the Project is in violation of Applicable Laws, Program Manager shall promptly request Contractor to cure any such violation in accordance with the terms of its Contract. If District becomes aware or is notified in writing that any Work on the Project is in violation of Applicable Laws, District will promptly notify Program Manager.

(c) ***Hazardous Materials.*** Program Manager shall not cause, and each Contract shall provide, that Contractors shall not cause any Hazardous Material to be brought on, kept, released

or used in or about the Land except in compliance with all applicable Environmental Laws. The performance of the Work shall comply with all Environmental Laws with respect to the construction of the Project and, from and after the commencement of construction of the Project, each Contract shall provide that Contractors shall clean up, abate, take corrective action, remove, treat or in any other way remediate any Hazardous Materials brought on to the Land or that is released by Contractor or that is part of the Work in connection with the construction and development of the Project pursuant to this Agreement as may be required pursuant to any Environmental Law. Program Manager hereby acknowledges that, prior to the Effective Date, it reviewed the reports and documents attached in Exhibit D. Each Contract shall require Contractor to abate and remove Hazardous Materials brought on to the Land or that is released by Contractor or that is part of the Work in connection with the Project as necessary to complete the Work contemplated by this Agreement. If any notices to Governmental Authorities are required, each Contract shall provide that Contractors shall give those notices at the appropriate times and provide a copy to District. Each Contract shall require Contractor to require any abatement subcontractors and disposal sites are appropriately licensed and qualified. Each Contract shall provide that Contractors shall keep detailed records documenting Work done so that District may independently verify compliance with all Applicable Laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

(d) ***Compliance With ADA.*** Each Contract shall provide that Contractors shall cause the Project on the Land to be designed and constructed in compliance with all applicable requirements of the ADA. Each Contract shall provide that each Contractor shall protect, defend, indemnify and hold District Indemnified Parties harmless from and against any and all liability threatened against or suffered by District Indemnified Parties by reason of a breach by any Contractor of the foregoing covenant.

(e) ***Anti-Discrimination.*** Program Manager agrees that in any activities undertaken under this Agreement by it, Program Manager shall comply with the provisions of Title 2, Chapter 14 of District of Columbia Code (D.C. Official Code §§ 2-1401.01 et seq., as amended). Program Manager shall not deny, restrict or abridge or condition the use of, or access to, any of the facilities and services to any person otherwise qualified, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

(f) ***Removal of Liens.*** If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, without limitation, tax liens, provided the underlying tax is an obligation of Program Manager by law or by a provision of this Agreement) is filed against the Land or any part thereof arising from any act or omission of Program Manager (only to the extent Program Manager filed the lien) or any Contractor or parties claiming by and through them, or such Contractor shall, if District has previously paid under a submitted Application for Payment the amount claimed to be due, within thirty (30) days after Program Manager or Contractor, as applicable, receives written notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record or bonded-off by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, provided, however, such Contractor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or

application in whole or in part of any such lien, provided that Program Manager or Contractor, as applicable, shall notify District in writing of any such contest and such Contractor shall diligently and in good faith contest such liens.

(g) ***Notice of Injury or Damage.*** From the commencement of construction of the Project, Program Manager shall notify District within ten (10) days of any occurrence at the Land of which Program Manager has received written notice and which Program Manager believes could give rise to (i) a claim not covered by insurance and for a cost of \$1,000,000 or more, or (ii) any claim exceeding \$5,000,000 whether or not covered by insurance.

(h) ***Litigation.*** Program Manager shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which in Program Manager's reasonable judgment could materially and adversely affect Program Manager's ability to fulfill its obligations under this Agreement no later than the tenth (10th) Business Day after the service of process on Program Manager with respect to such suit or proceeding.

(i) ***Signage Requirements.*** Program Manager, or each Contract shall provide that Contractors, shall post and maintain up to three (3) signs on the Land in a location that is visible to the public that indicate that the Project has been sponsored by District, to the extent permitted by Applicable Law. District shall have the right to review and approve the form and location of the sign; provided that the form and location of the sign must be in compliance with the requirements of Applicable Law. By approving any sign, District makes no representations or warranties that the sign complies with any applicable governmental requirements or that such signage may be installed on the Project or on the Land. Each Contract shall provide Contractor must comply with all applicable governmental requirements regarding the installation of signage at the Land.

(j) ***Procurement of Materials and Supplies.*** To the maximum extent reasonable, each Contract shall provide that Contractors shall arrange to purchase or take delivery of construction materials and operating supplies in District, such that if sales tax is payable on such transactions, the sales tax will be payable to District.

(l) ***No Prohibited Persons.*** Program Manager shall not become, and Program Manager shall not hire or permit Contractor to knowingly hire, a Prohibited Person. Each Contract shall provide that Contractors shall not become and shall not hire or permit subcontractors to knowingly hire, a Prohibited Person.

ARTICLE 7 INSURANCE, DAMAGE AND DESTRUCTION

7.1. **General Requirements.** The Construction Contracts and Architect Contracts shall provide that all Construction Contractors and the Architect hired by the Program Manager in accordance with the terms of this Agreement to construct, furnish, and equip the Project to procure the types of insurance specified below and maintain such insurance during the entire period of performance under their applicable Construction Contracts and the Architect Contract. The Program Manager shall submit Architects' and Construction Contractors' Certificate of Insurance to the District giving evidence of the required coverage prior to a Construction Contractor or the Architect commencing performance of the Work. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have

been provided to, and accepted by, the District. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Unless as otherwise provided in section 7.13, Each Construction Contract and Architect Contract shall provide that the Construction Contractor(s) and the Architect(s) respectively require their subcontractors to carry the same or similar insurance required herein where commercially reasonable and appropriate under the circumstances, taking into consideration the value, type and attendant risks of the services to be performed by the subcontractors.

(a) All required policies shall contain a waiver of subrogation provision in favor of the District. District shall be included in all policies required hereunder to be maintained by the Construction Contractor(s) and Architect (except for workers' compensation and professional liability insurance) as an additional insured for claims against the District relating to the Work, with the understanding that any affirmative obligation imposed upon the insured Construction Contractor(s) and Architect (including without limitation the liability to pay premiums) shall be the sole obligation of the Construction Contractor(s) and Architect, and not the additional insured. The additional insured status under the Construction Contractors' and Architect's commercial general liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 and CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the District in writing. All of the Construction Contractors' and Architect's liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an additional insured) for all claims against the additional insured arising out of the performance of the Work by the Construction Contractor(s) or Architect, or anyone for whom the Construction Contractors or Architect may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

(b) If the Construction Contractor(s), Architect or their subcontractors maintain broader coverage and/or higher limits than the minimums shown below, District requires and shall be entitled to such broader coverage and/or higher limits. If an Architect or Construction Contractor cannot meet a requirement set forth in this Article 7, Program Manager shall notify District of an alternative available to meet the requirement (which may include requesting decreased insurance coverage) and District shall review the proposed alternative and in District's sole discretion approve or deny such proposed alternative.

(c) Commercial General Liability Insurance ("CGL") - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement that each carry a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the District in writing), covering liability for all ongoing and completed operations under the Construction Contracts and Architect Contract, including ongoing and completed operations under all

subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an insured Construction Contract or Architect Contract (including the tort liability of another assumed in the Agreement) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

(d) Automobile Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the District in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Construction Contractor(s), Architect, or their subcontractors, with minimum per accident limits equal to \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(e) Workers' Compensation Insurance The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractors, Architect and their subcontractors under this Agreement workers' compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the Work is performed.

(f) Employer's Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

(g) Crime Insurance (3rd Party Indemnity) - The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required) of a Crime policy including 3rd party fidelity to cover the dishonest acts of Construction Contractors and their subcontractors, employees and/or volunteers which result in a loss to District. District shall be included as loss payee. The policy shall provide a limit of \$50,000 per occurrence.

(h) Cyber Liability Insurance - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000

aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Construction Contractors, Architect and their subcontractors in performance of the Work and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

(i) Environmental Liability/Contractors' Pollution Liability Insurance – The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required, unless the Architect makes soil borings or other soil investigations, then coverage shall be required to the extent of such investigations) of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Construction Contractor(s) or its/their subcontractors. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, each Construction Contractor warrants that any retroactive date applicable to coverages under the policy precedes the performance of any of the Work and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

(j) The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall furnish to District owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Construction Contractor(s) for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Work. Such coverages must be maintained with limits of at least the amounts set forth above.

(k) Employment Practices Liability - The Construction Contracts shall provide that the Construction Contractor shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s) and its/their subcontractors under this Agreement (but not with respect to the Architect, for whom this coverage is not required) of employment practices liability insurance to cover the defense of claims arising from employment related wrongful acts including but not limited to: discrimination, sexual harassment, wrongful termination, or workplace torts, whether between employees of Construction Contractors, their subcontractors, or against third parties. Employment

Practices Liability coverage must specifically state third party liability coverage is included. Construction Contractor will indemnify and defend District should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to temporary help firms and independent contractors hired by Construction Contractors. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

(l) Professional Liability Insurance (Errors & Omissions) - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor(s) and Architect each warrants that any applicable retroactive date precedes the date the Construction Contractor(s) or Architect first performed any professional services in furtherance of the Work and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services performance in connection with the Work.

(m) Commercial Umbrella or Excess Liability - The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide evidence satisfactory to the District with respect to services performed by Construction Contractor(s), Architect and their subcontractors under this Agreement of commercial umbrella or excess liability insurance with minimum limits equal to: (i) for the Construction Contractor(s) \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of all liability policies; or (ii) for the Architect, \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

(n) Builders Risk - The District shall purchase and maintain in a company authorized to do business in the District builders risk coverage written on an "all-risk" special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery/equipment breakdown, earthquake and flood perils. Building ordinance and terrorism coverage will be included. The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry. At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion. Builders risk insurance shall include the interests of the District, the Construction Contractors and their subcontractors.

(o) Primary And Noncontributory Insurance. The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the District

(p) Duration. All required insurance shall be maintained until all the Work is accepted by District and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this Agreement and two years for non-construction related Agreements.

(q) Liability. These are the required minimum insurance requirements established by District. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONSTRUCTION CONTRACTOR AND ARCHITECT'S LIABILITY UNDER THIS AGREEMENT.

(r) Contractor's Property. Construction Contractor(s), Architect and any subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of District.

(s) Measure Of Payment. District shall not make any separate measure or payment for the cost of insurance and bonds. Unless the District elects to procure and implement an owner's construction insurance program (OCIP) as provided in section 7.14, the Construction Contractor and Architect shall include all of the costs of insurance and bonds in the Cost of the Project, less and except Builders Risk Insurance, which may be procured by the District.

(t) Notification. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall ensure that all policies provide that the District shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall provide the District with ten (10) days prior written notice in the event of non-payment of premium. The Construction Contractor and Architect will also provide the District with updated Certificates of Insurance should coverages renew during the Agreement.

(u) Certificates Of Insurance. The Construction Contractor and Architect shall submit certificates of insurance to District giving evidence of the required coverage as specified in this section prior to executing any Construction Contract or the Architect Contract. Certificates of insurance must reference the corresponding Construction Contract or Architect Contract (by identification number or otherwise). Evidence of insurance shall be submitted to District in accordance with Section 13.2. The District may request, and the Construction Contractor(s) and the Architect shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained expires prior to completion of the Work performed by the Construction Contractor(s), the Architect or their subcontractors, renewal certificates of insurance and additional insured and other endorsements shall be

furnished to the District prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the District on an annual basis as the coverage is renewed (or replaced).

(v) Disclosure Of Information. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor and Architect shall agree that District may disclose the name and contact information of their insurers to any third party which presents a claim against District for any damages or claims resulting from or arising out of work performed by them, their agents, employees, servants or subcontractors in the performance of the Work.

(w) Carrier Ratings. All insurance required in connection with this Agreement shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.

7.2. Treatment of Proceeds.

(a) Proceeds of Casualty Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to District.

(b) Cooperation in Collection of Proceeds. The Construction Contracts and Architect Contracts shall provide that the Construction Contractor(s) and Architect shall reasonably cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss if so requested by District or Architect or Construction Contractor(s), as applicable.

7.3. Effect of Casualty on Agreement. This Agreement shall not terminate, be forfeited or be affected in any manner (other than the adjustment of the dates by which Substantial Completion and Final Completion of the Project and other pertinent milestones are to be achieved), by reason of damage to, or total or partial destruction of, or untenability of, the Project or any part thereof resulting from such damage or destruction, and District's and Construction Contractor(s) and Architect's obligations hereunder shall continue as though the Project had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever and Construction Contractor(s), upon receipt of the applicable insurance proceeds required to restore the Project, shall restore the Project to its state prior to the casualty, except that the dates by which Substantial Completion and Final Completion of the Project and other pertinent milestones are to be satisfied shall be equitably adjusted in the event of a casualty.

7.4. Owner's Construction Insurance Program (OCIP). The District, with respect to each Phase of the Work, shall have the option, in its sole and uncontrolled discretion, to provide all insurance coverages required under section 7.1 for the Construction Contractor(s) and their subcontractors with respect to services to be performed by them under this Agreement. The District shall notify the Program Manager that it intends to exercise this option no later than ninety (90) days after the Parties, under Section 4.1(d)(i) of this Agreement, have agreed upon the construction documents and the estimated budget for the applicable Phase of the Work, and release and forever discharge the Construction Contractor(s) and Architect of any and all responsibility with respect to the Construction Contractor(s) and Architect's requirements under section 7.1 relating to the applicable Phase of the Work. The Construction Contractor(s) and Architect's obligations with

respect to ensuring that the Architect provides the insurance coverages applicable to the Architect in section 7.1 shall not be affected by the exercise of the District's option to provide insurance coverages for the Construction Contractor(s) and their subcontractors.

ARTICLE 8 ASSIGNMENT

8.1. Assignment. Program Manager shall not assign this Agreement to any Person, and Program Manager represents and warrants that Program Manager shall not make or create, or suffer to be made or created, any Assignment of Program Manager's interest in this Agreement without the prior written consent of District, which may be granted or withheld in District's sole and absolute discretion.

8.2. Affiliate Assignment. Program Manager, upon notice District as soon as practicable, but in any event at least thirty (30) days prior to such assignment, may, without District's approval, assign this Agreement to an: (i) Affiliate of the "Tenant" under the Lease, or (iii) Affiliate of UHS of Delaware, Inc. Program Manager's notice shall include a copy of the proposed assignment and assumption agreement which shall include: (1) affirmation to District that the assignee has accepted all of the Program Manager's obligations pursuant to this Agreement, (2) provide documentation confirming that the proposed assignment is an Affiliate of the "Tenant" under the Lease or an Affiliate of UHS of Delaware, Inc. and (iii) deliver a certification from the proposed assignee affirming the representations and warranties contained in Section 2.1. No later than five (5) Business Days following the consummation of the assignment, the assignee shall deliver to District proof of insurance required under this Agreement obtained by assignee, and a copy of the fully executed assignment agreement.

ARTICLE 9 EXCULPATION AND INDEMNITY

9.1. Exculpation. Other than District with respect to the obligations specifically set forth in this Agreement, none of District Indemnified Parties shall have any liability (personal or otherwise) arising from or in connection with this Agreement or development and construction of the Project except for fraud or willful misconduct.

9.2. Indemnification. From and after the commencement of construction of the Project and subject to Section 9.4 below, District Indemnified Parties shall not be liable to Program Manager or any of its Affiliates for, and Program Manager shall defend, indemnify and hold District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury (whether physical (including, without limitation, death), economic or otherwise) to Program Manager or to any other Person in, about or concerning the Project or the Land or any damage to, or loss (by theft or otherwise) of, any of Program Manager's property or of the property of any other Person in, about or concerning the Project or the Land, irrespective of the cause of injury, damage or loss (including, without limitation, that caused by any Work on the Project or rising from or associated with any violation of the Environmental Laws by Program Manager), except to the extent (i) any of the foregoing is due to the gross negligence, fraud, or willful misconduct of any District Indemnified Party or (ii)

as otherwise specified as a District obligation in this Agreement. The obligations of Program Manager under this Section 9.2 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project.

9.3. Defense of Claims.

(a) If any claim, action, or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Section 9.2 for indemnification by Program Manager, then, unless District determines that such representation is legally prohibited, upon written demand by District, Program Manager shall either resist, defend, or satisfy such claim, action, or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Program Manager's insurance carrier (if such claim, action, or proceeding is covered by insurance) or such other attorneys as District shall approve, which approval shall not be unreasonably withheld, conditioned, or delayed. If Program Manager elects to undertake such defense by its own counsel or representatives, Program Manager shall give Notice of such election to the District Indemnified Party within ten (10) days after receiving Notice of the claim therefrom. The District Indemnified Party shall cooperate with Program Manager in such defense at Program Manager's expense and provide Program Manager with all information and assistance reasonably necessary to permit Program Manager to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action, or proceeding, as the case may be.

(b) If Program Manager fails or refuses to undertake such defense or fails to act within such period of ten (10) days as provided in Section 9.3(a), the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior Notice to Program Manager, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Program Manager. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Program Manager. If a claim is settled by District and Program Manager has not agreed to the District's settlement of the underlying claim, the Program Manager retains the right to dispute the District's indemnification claim against the Program Manager.

9.4. Notification and Payment. District shall promptly notify Program Manager of the imposition of, incurrence by, or assertion against a District Indemnified Party of any cost or expense as to which Program Manager has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article 9. Program Manager agrees to pay such District Indemnified Party all amounts due from Program Manager under this Article 9 within sixty (60) days after receipt of the Notice thereof, together with invoices evidencing all such costs and expenses. Any delay by District in sending such Notice does not relieve Program Manager of the indemnification obligations set forth in this Article 9, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

9.5. Survival. The provisions of this Article 9 shall survive the expiration or termination of the Term with respect to events and matters that arise or occur during the Term (even if discovered following the expiration or termination of the Term).

ARTICLE 10
EVENTS OF DEFAULT; DISPUTES; REMEDIES

10.1. Events of Default. Each of the following Program Manager events, after the expiration of any applicable notice and cure period, shall constitute an “**Event of Default**”:

(a) Program Manager’s failure to comply with any terms of the Agreement and such failure continues for a term of thirty (30) days after written notice from the District, or if such a default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), within such period of time as may be reasonably necessary to cure such default but in no event more than an additional one hundred twenty (120) days (subject to Unavoidable Delay), or additional period permitted by the District, provided that Program Manager commences the cure within the thirty (30) day period after notice by District and thereafter diligently pursues and completes such cure.

(b) if Program Manager admits, in writing, that it is generally unable to pay its debts as such become due;

(c) if Program Manager makes an assignment for the benefit of creditors;

(d) if Program Manager causes the Architect or a Contractor to incur more than \$10,000.00 in costs that are claimed by either the Architect or Contractor that are incurred due to Program Manager’s fraud or willful misconduct.

(e) if Program Manager files a voluntary petition under Title 11 of the United States Code, or if Program Manager files a petition or an answer seeking, or consenting to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Program Manager, of all or any substantial part of its properties, or of all or any part of Program Manager’s interest in the Project or the Land, and the foregoing are not stayed or dismissed within one hundred eighty (180) days after such filing or other action; or

(f) if, within ninety (90) days after the commencement of a proceeding against Program Manager seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, District, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent of Program Manager, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Program Manager, of all or any substantial part of its properties, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated.

10.2. Remedies to Events of Default. If any Event of Default occurs and is continuing, District may take any one or more of the following remedial steps:

- (a) seek enforcement of Program Manager's obligations hereunder by any equitable remedies, such as specific performance or injunction;
- (b) pursue any remedies that may be available to District under the Performance and Payment Bond if the applicable Contractor is in default under its Contract;
- (c) suspend its performance under this Agreement; or
- (d) terminate this Agreement.

10.3. Rights and Remedies Cumulative. Except as otherwise expressly set forth herein, the rights and remedies of the Parties under this Agreement, whether provided by law, in equity, or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

10.4. Assignment of Plans and Specifications; Instruments of Service.

(a) If District terminates this Agreement as a result of an Event of Default, Article 11, or if District elects to exercise any right it may have under this Agreement to construct the Project, effective upon such termination or the exercise of such right, Program Manager shall quitclaim to District all of Program Manager's right, title and interest, if any, in and to all of the Plans and Specifications, Instruments of Service, any furniture, furnishings, fixtures, and equipment, Building Equipment, or other tangible personal property or equipment purchased pursuant to the Project Budget, permits, completion bonds in favor of Program Manager, sewer permits and tap fees, utility deposits, any BIM rights and ownership, and all other contracts, agreements, permits, authorizations in any way related to the development and construction of the Project, and at the request of District, the Construction Contract(s). Such assignment shall vest automatically without further written documentation and shall be free of liens and any claims for payment by Program Manager.

(b) The Plans and Specifications and other documents and electronic data furnished by Program Manager to District under this Agreement or prepared by or on behalf of Program Manager are deemed to be "**Instruments of Service.**" The Architect Contract shall provide for transfer of the ownership for all Instruments of Service for the District's use for the Hospital including operations, facilities, and maintenance as well as future design/construction work at the Hospital. The Instruments of Service shall not be used for duplication for any other facility located off of the Land. Program Manager hereby collaterally assigns to District all common law, statutory and other reserved rights, if any, including ownership, licenses, and copyright interests, whether now owned or hereafter acquired in the Instruments of Service with respect to the Project, whether owned directly by Program Manager or obtained by assignment. District may use all Instruments of Service for construction of the Project and for its normal and customary maintenance including for information purposes in connection with future alterations, renovations or expansions of the Project.

(c) In the event District terminates this Agreement prior to Final Completion, District may use the Instruments of Service to complete the Project; provided, however, that District shall

not use the Plans and Specifications and other Instruments of Service for execution of any facilities other than that which is the subject of this Agreement.

10.5. Dispute Resolution. In the event of any dispute arising under, or related to this agreement (each, a “**Dispute**”), the Parties shall endeavor in good faith to resolve the Dispute through informal discussions. If initial informal discussions are unsuccessful at resolving the Dispute, then such Dispute may be submitted to the Mayor and the CEO of Program Manager, who shall meet and confer and use their best efforts to resolve such Dispute within thirty (30) days of such submission. If the Mayor and the CEO of Program Manager are unable to resolve such Dispute within thirty (30) days of such submission, the Parties may try in good faith to settle the Dispute by non-binding mediation. In such event, the Parties will choose a mutually agreeable neutral third party, who shall mediate the Dispute pursuant to the Commercial Mediation Rules of the American Arbitration Association, the Alternative Dispute Resolution Service Rules of Procedure for Mediation of the American Health Lawyers Association, JAMS rules and procedures, or such other mutually agreeable rules and procedures as the Parties may decide. In the event that such mediation efforts are unsuccessful or in any Party’s discretion, either Party may pursue legal or equitable remedies as set forth in this Agreement.

10.6. Remedies for District’s Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Agreement, including, without limitation, the obligation to timely pay Progress Payments and Final Payment as provided in this Agreement, and such default shall not have been cured for a period of thirty (30) days after receipt by District of written notice of said default from Program Manager, or if such default (other than the failure to timely pay Progress Payments and Final Payment) cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within one hundred and twenty (120) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then Program Manager shall have the right to declare a default of this Agreement upon written notice to District, and pursue and exercise all remedies available at law or in equity.

10.7. Mitigation. In the event of a default by either Party under this Agreement, the non-defaulting Party shall use reasonable efforts to mitigate the damages it incurs as a result of such default.

ARTICLE 11 TERMINATION FOR REASONS OTHER THAN AN EVENT OF DEFAULT

11.1. Scheduled Termination. Other than the obligations, if any, of Program Manager or District that expressly survive termination of this Agreement, this Agreement shall automatically terminate and be of no further force and effect the earlier of: (i) after District makes the Final Payment after the Final Completion Date or (ii) September 30, 2026, and District and Program Manager shall each execute such documents as may be reasonably required to evidence such termination. The operation of the Project and the Land shall be governed by the terms and conditions of the Lease. Notwithstanding any other provision herein, the Final Completion Date shall not be extended beyond September 30, 2026 unless amended to a later specific date as agreed to by the Parties in writing as an amendment to this Agreement.

11.2. Failure To Achieve Outside Performance Dates.

(a) In accordance with the terms and conditions of this Agreement, the following tasks and objectives shall be achieved within the timeframes specified below, subject to Unavoidable Delay and as modified in accordance with this Agreement (the “**Outside Performance Dates**”):

(i) The Architect Contract shall provide that Architect shall submit to District and Program Manager permit drawings by Architect for the Project by the date set forth in the CPM Schedule set forth in Exhibit L;

(ii) The Land Use Approvals shall be obtained by eighteen (18) months after the Effective Date;

(iii) The CON shall be obtained by eighteen (18) months after the Effective Date;

(iv) Program Manager shall have entered into Construction Contract (s) for the Project by the date set forth in the CPM Schedule set forth in Exhibit L; and

(v) The Project shall be Substantially Complete and ready for commercial operation by the Substantial Completion Date.

(vi) The Project shall be complete by the Final Completion Date.

(b) If Program Manager fails to accomplish any of the obligation specified in Section 11.2(a)(i)-(vi), District shall have the right to terminate this Agreement by providing written notice to Program Manager prior to Program Manager accomplishing such obligation, and this Agreement shall terminate.

11.3. Termination Due to Project Budget Shortfall. Either Party shall have the right to terminate this Agreement pursuant to Section 4.5(d) or Section 4.6(d)(vi) and with ninety (90) days’ written notice to the other Party. Prior to the termination in this Section 11.3 becoming effective Program Manager shall assign to District all Contracts and Architect Contract.

11.4. Effect of Termination. If this Agreement terminates pursuant to Section 11.1 or 11.3, the Parties shall have no further rights or obligations hereunder, except for payments due to Contractors and Architect for work performed under this Agreement, those rights or obligations that by the express terms survive termination of this Agreement, and no action, claim or demand may be based on any term or provision of this Agreement other than those provisions expressly provided to survive such termination. District shall have no payment obligations for any work activities or services not performed in accordance with this Agreement.

11.5. Termination for Convenience. District may, upon seven (7) days written notice to Program Manager, terminate this Agreement in whole or specified part, for its convenience, for any reason. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions including submission of final invoices to District which shall be paid by District in accordance with the terms of this Agreement.

ARTICLE 12
GOVERNMENTAL LIMITATIONS

12.1. Anti-Deficiency Limitations. The following limitations exist as to each and every purported obligation of District set forth in this Agreement, whether or not expressly conditioned:

(a) The obligations of District to fulfill financial obligations pursuant to this Agreement or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which District is a party) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2004 Supp.) (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) § 446 of District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of District in anticipation of an appropriation by Congress for such purpose, and District’s legal liability for the payment of any of its obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

(b) No officer, employee, director, member or other natural person or agent of District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a District Default.

(c) This Agreement shall not constitute an indebtedness of District nor shall it constitute an obligation for which District is obligated to levy or pledge any form of taxation or for which District has levied or pledged any form of taxation. No District of Columbia official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by the Council and by Act of Congress and is lawfully available.

(d) It is specifically understood and agreed that a failure to obtain appropriated funds shall not constitute a District default.

ARTICLE 13
GENERAL PROVISIONS

13.1. Limitation of Rights. With the exception of any rights herein expressly conferred, nothing in this Agreement is intended or shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

13.2. Notices. All notices, demands, approvals, consents, directions, certificates or other communications hereunder shall be in writing, addressed to the appropriate Notice Address, and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by nationally recognized overnight commercial courier service or by facsimile with proof of receipt (with a copy to follow by U.S. Mail). Notices which shall be served in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the following times: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage

prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

13.3. Waiver. No failure by a Party to this Agreement to insist upon the strict performance of any covenant, duty, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, duty, agreement, term or condition. A Party by giving notice to the other Party may, but shall not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

13.4. Effect of Granting or Failure To Grant Approvals or Consents. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. All consents and approvals which may be given by a Party under this Agreement shall not (except as otherwise provided in this Agreement, such as where a consent or approval is to be provided or withheld in a Party's sole and absolute discretion) be unreasonably withheld, conditioned or delayed by such party and the Parties shall use good faith efforts to give or deny any consent or approval within the time period provided. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for such act or any other act. All reviews, approval and consents by the Parties under the terms of this Agreement are for the sole and exclusive benefit of the Parties and no other person or party shall have the right to rely thereon. The Parties' sole remedy for the other Party's withholding or conditioning its consent shall be an equitable action in mandamus to compel such consent if it were determined that such consent had been unreasonably withheld, conditioned or delayed.

13.5. Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The headings of the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

13.6. Relationship of Parties. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, a Party shall not be deemed or constituted partners or joint venturers of the other Party, and a Party shall not be the agent of the other Party nor have any authority, express or implied, by implication or otherwise, to enter into contracts on behalf of or otherwise in any way bind the other Party, and a Party shall not be responsible for any debt or liability of the other Party (except as otherwise expressly provided herein relating to indemnification).

13.7. Applicable Law. The laws of District of Columbia shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law principles.

13.8. Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement, at no third party out-of-pocket expense or additional liability than is set forth in this Agreement to the Party being requested to execute any such additional documents or instruments.

13.9. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof, unless this construction would operate as an undue hardship on District or Program Manager or would constitute a substantial deviation from the general intent of the Parties as reflected in this Agreement.

13.10. Joint Preparation. Each of District and Program Manager acknowledges that it has thoroughly read and reviewed this Agreement, including all Exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto.

13.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13.12. Incorporation of Exhibits. All Exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

13.13. Survival. The indemnity obligations of Program Manager under Article 9 and any other provisions of this Agreement which expressly provide for survival shall survive any termination of this Agreement.

13.14. Entire Agreement. This Agreement (including the Exhibits annexed hereto and made part hereof) collectively contain all the agreements and understandings between District and Program Manager relative to the transactions contemplated herein and thereby and there are no agreements or understandings, oral or written, expressed or implied, between them with respect thereto other than as herein set forth or expressly referenced herein and made a part hereof.

13.15. Amendments and Supplements. This Agreement may be amended or modified only in writing executed by Program Manager and the Mayor or the Mayor's designee. The Mayor shall have the authority to approve on behalf of District such amendments or modifications as the Mayor shall determine to be in the best interests of District. Any deadline established in this Agreement may be extended by mutual written agreement.

13.16. Confidentiality. The provisions of the District of Columbia Freedom of Information Act of 1976, as amended (D.C. Official Code §§ 2-531 et seq.) ("**DCFOIA**") apply, to the extent of DCFOIA, to communications, documents, agreements, information or records with respect to this Agreement.

13.17. Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY**

LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.18. Forum for Disputes. District and Program Manager agree that any suit, action, or proceeding arising out of this Agreement, or any transaction contemplated hereby, shall be brought exclusively in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia. District and Program Manager irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.19. Rules of Construction. Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

13.20. False Claims Provisions. Notwithstanding any provision to the contrary in this Agreement, any demands for payment or reimbursement under this Agreement shall be subject to D.C. Official Code §§ 2-381.01-2-381.10 (2013) (“**False Claims Provisions**”) and the remedies available thereunder.

13.21. Time of the Essence; Standard of Performance. Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or District of Columbia recognized holiday or day on which the District of Columbia government is officially closed, such deadline shall be extended to the next Business Day.

13.22. Third Party Beneficiaries. Except as otherwise expressly provided herein related to indemnification, nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against any Party, and no third party shall be deemed a third-party beneficiary of this Agreement or any provision hereof. The Parties shall have no joint and several liability.

13.23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.24. Attorney’s Fees. Each Party shall be responsible for its own legal fees in the event either Party brings any legal action or proceeding to enforce the terms of this Agreement except as set forth in Article 9.

13.25.District as Contracting Party. Notwithstanding any other provision herein, District's actions, consents and reviews of matters pursuant to this Agreement refers solely to the review undertaken by District as a contracting party and shall not constitute a regulatory approval required by Applicable Law. All regulatory approvals required by Applicable Law are separate and apart from any approval, consent or any other action of District pursuant to the terms of this Agreement. No approval by District as a contractual Party to this Agreement is binding on the applicable Governmental Authority having authority to issue such regulatory approval; provided such approval by District is binding on the District as a contractual Party to this Agreement.

[Signature Page Follows]

IN TESTIMONY WHEREOF, District and Program Manager have caused this Development Agreement to be signed as of the first date hereinabove mentioned.

DISTRICT:

DISTRICT OF COLUMBIA, a municipal corporation

By _____
Name _____
Title _____

PROGRAM MANAGER:

[_____, LLC]

By _____
Name _____
Title _____

EXHIBIT A – LAND

DESCRIPTION OF
PROPOSED A & T LOT A
FOR
ST. ELIZABETH EAST CAMPUS
SUBDIVISION LOT 2, SQUARE S-5868
DISTRICT OF COLUMBIA
November 30, 2018

Being part of Subdivision Lot 2 in Square S-5868 as shown on a Plat of Subdivision recorded April 27, 2012 in Subdivision Book 206 at Page 95 and part of Assessment and Taxation (A&T) Lot 830 as shown on Assessment and Taxation Plat 3862-S, both on file among the Records of the Office of the Surveyor of the District of Columbia, and being more particularly described as follows:

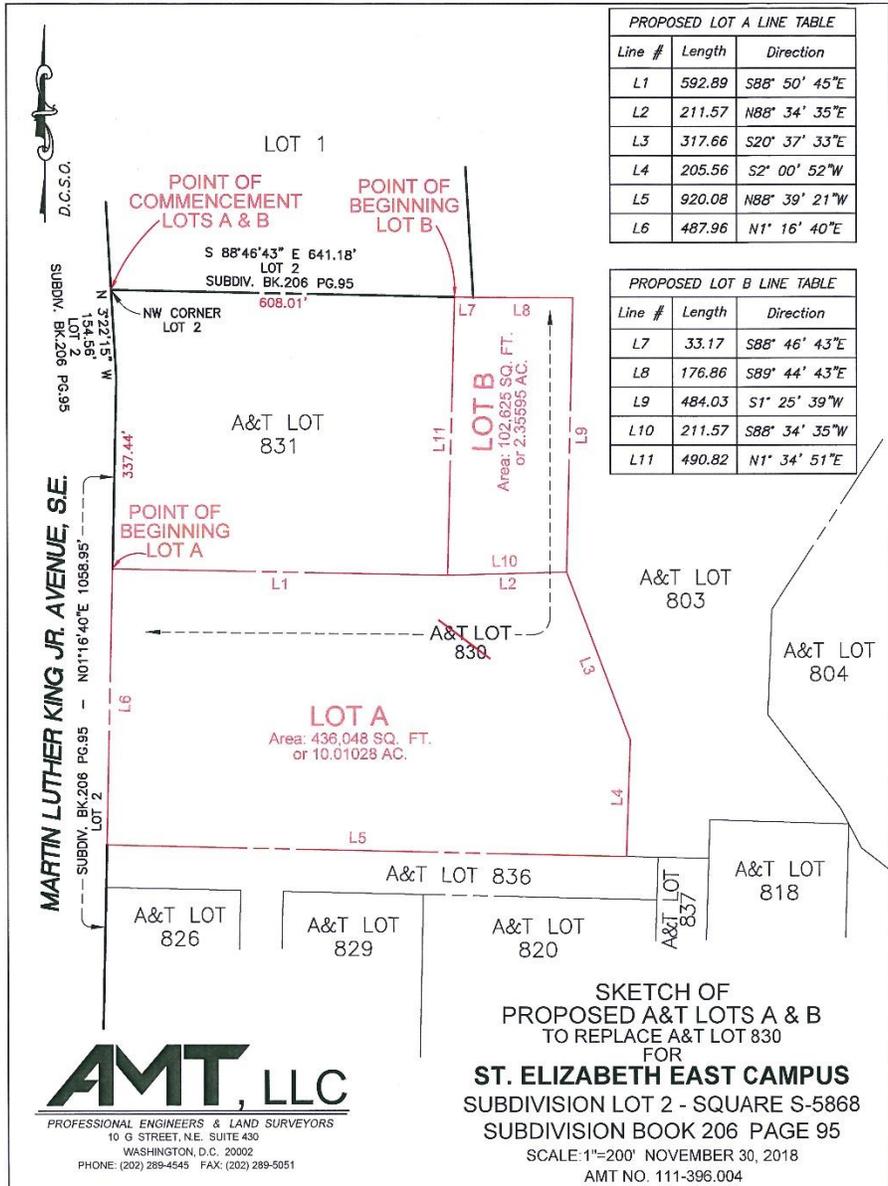
Commencing at a point on the easterly line of Martin Luther King, Jr. Avenue, S.E. (variable width); said point also being the northwesterly corner of said Lot 2; thence running with said easterly line of Martin Luther King, Jr. Avenue, S.E., South 3° 22' 15" East, 154.56 feet; thence South 01° 16' 40" West, 337.44 feet to the Point of Beginning of proposed Lot A; said point being the northwest corner of said A&T Lot 830; thence running in, through, over and across said Lot 2 the following five (5) courses and distances and with the outline of said A&T Lot 830

1. South 88° 50' 45" East, 592.89 feet to a point; thence for a new line of division running through A&T Lot 830
2. North 88° 34' 35" East, 211.57 feet to a point on the outline of said A&T Lot 830; thence continuing to run with the outline of said A&T Lot 830 the following four (4) courses and distances
3. South 20° 37' 33" East, 317.66 feet to a point; thence
4. South 02° 00' 52" West, 205.56 feet to a point; thence
5. North 88° 39' 21" West, 920.08 feet to a point on said easterly line of Martin Luther King, Jr. Avenue, S.E.; thence running with said easterly line
6. North 1° 16' 40" East, 487.96 feet to the Point of Beginning.

Containing a computed area of 436,048 square feet or 10.01028 acres of land, more or less.


William L. Gilbert
Licensed Land Surveyor
District of Columbia License No. 905059
For AMT, LLC





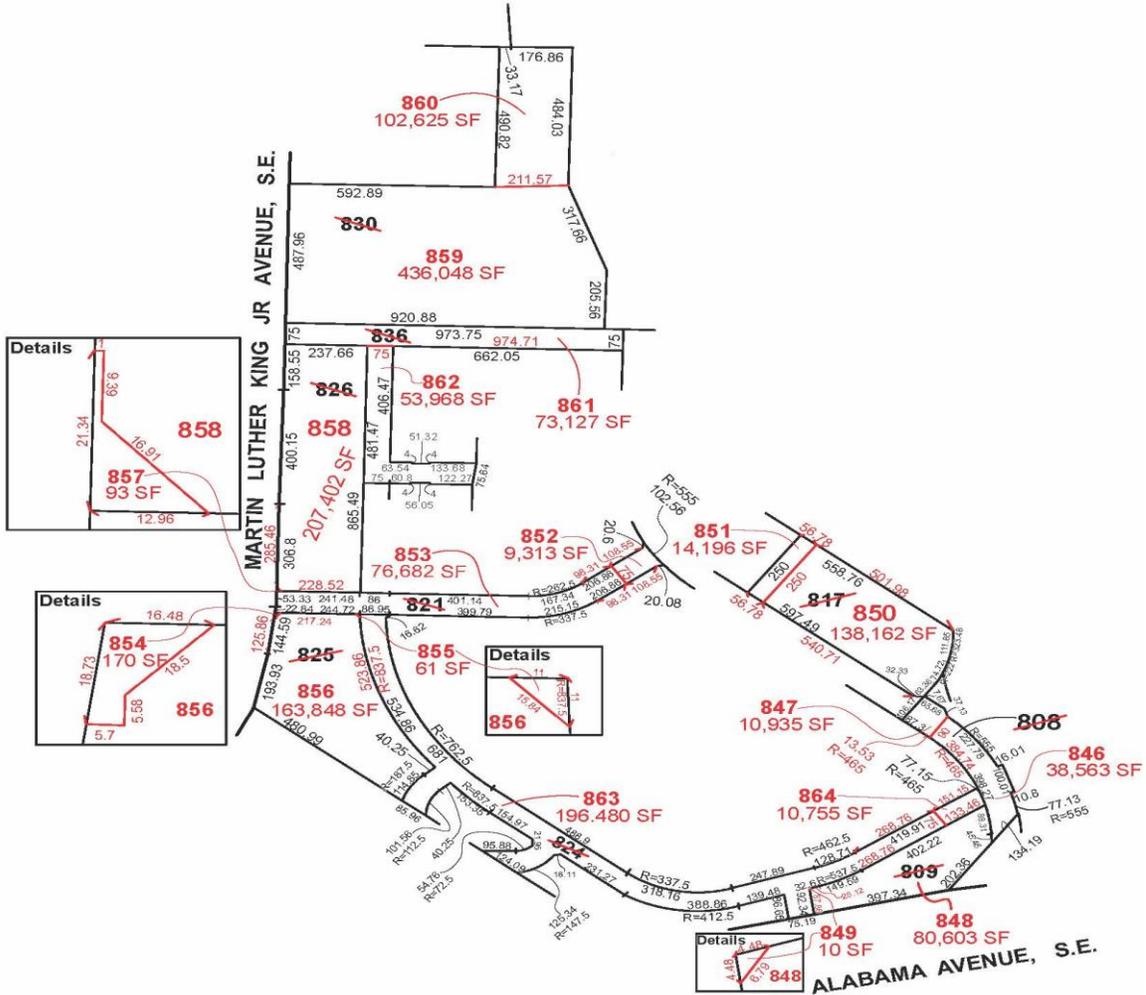
Part 1

OFFICE OF TAX AND REVENUE
ASSESSMENT DIVISION



ASSESSMENT AND TAXATION PLAT

Square 5868S



David Smith
Draftsman

A073383
Reference

5/1/20
Date

Scale, 1 inch = 400 ft

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.

Quincy Loney
for Chief Assessor, Office of Tax and Revenue

EXHIBIT B
CAPITAL ELIGIBILITY GUIDELINES

**American Hospital Association 2018 Estimated Useful Lives of Depreciable
Hospital Assets**

Product Code: 061190

Author: Health Forum

ISBN: 978-0-87258-983-4

https://ams.aha.org/eweb/DynamicPage.aspx?WebCode=ProdDetailAdd&ivd_prd_key=de31803d-40e3-4a9e-91dc-4e780fb1d5b7

EXHIBIT C APPLICATION FOR PAYMENT FORM

1

DRAFT AIA® Document G702™ - 1992

Application and Certificate for Payment

TO OWNER:	PROJECT:	APPLICATION NO: 001	Distribution to:
FROM CONTRACTOR:	VA ARCHITECT:	PERIOD TO:	OWNER: <input type="checkbox"/>
		CONTRACT FOR:	ARCHITECT: <input type="checkbox"/>
		CONTRACT DATE:	CONTRACTOR: <input type="checkbox"/>
		PROJECT NOS: / /	FIELD: <input type="checkbox"/>
			OTHER: <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$0.00
2. NET CHANGE BY CHANGE ORDERS	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ±2)	\$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$0.00
5. RETAINAGE:	
a. 0 % of Completed Work (Column D + E on G703) = \$0.00 = \$0.00	
b. 0 % of Stored Material (Column F on G703) = \$0.00 = \$0.00	
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$0.00
6. TOTAL EARNED LESS RETAINAGE	\$0.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
By: _____ Date: _____
State of: _____
County of: _____
Subscribed and sworn to before
me this _____ day of _____
Notary Public: _____
My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total charges approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	\$0.00

AIA Document G702™ - 1992. Copyright © 1953, 1963, 1965, 1978 and 1992 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 11:51:11 AM 07/24/2002 under order no. 0224967988_1 which expires on 10/30/02, and is not for resale.
User Notes: (175) (02/78)

EXHIBIT C APPLICATION FOR PAYMENT FORM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
CAPITAL CONSTRUCTION SERVICES



Instructions to Vendors

This worksheet contains formulas that calculate the appropriate amount due for work performed. To ensure the prompt payment of invoices, contractors are advised not to alter fields containing formulas. Errors in the calculations of the amount due will result in submissions being rejected resulting in a delay of payment.

Summary Progress Cover Sheet

Vendors are to complete fields highlighted in yellow.

Date Submitted	Vendor Invoice #	Vendor Signature
Contract #	Purchase Order #:	Printed name
Project Name	Contract Start & End Dates	Title
Contractor	Billing Start and End Dates	Date

Pay Request Form

Vendors are to complete columns highlighted in yellow. Complete the Pay Request Form to match the line items on your PO.

CO#/ Mod# (drop-down menu provided)	Enter the change order number if the line corresponds to change order work. Leave blank if line is original/base contract work.
Description	Enter a description from PO for line item
Contract Amount	Enter line item cost from PO
Previous Work Value	Enter total complete amount for this line item from previous invoices
Work This Invoice Value	Enter cost of completed work in this invoice period for this line item
Stored Material This Invoice Value	Enter the stored material value for this invoice
General Retainage Percent	Enter the General retainage amount for each line used
Previous Retainage Percent	Enter the percentage held for retainage in the previous invoice

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES
CAPITAL CONSTRUCTION SERVICES



Date Submitted: _____

Contract #: _____ Purchase Order #: _____

Project Name: _____ Contract Start Date: _____

Contractor: _____ Contract Completion Date: _____

Vendor Invoice #: _____ Billing Start: _____ Billing End: _____

1. Original Contract Amount	\$0.00	
2. Net Amount of Change Orders Approved	\$0.00	
3. Total Contract Amount To Date (1+2)		\$0.00
4. Total Amount Completed %	0.00%	\$0.00
5. Retainage:	0.00%	\$0.00
6. Less Previous Payments		_____
TOTAL AMOUNT DUE THIS PAYMENT		\$0.00

Balance to Finish	0.00%	-
-------------------	-------	---

CONTRACTOR'S (GC) CERTIFICATE: I certify that all items, quantities and prices of work and material shown in the application for payment are correct to the best of my knowledge and belief and have been completed in accordance with the Contract Documents. ARCHITECT'S
(A/E) / CONSTRUCTION MANAGER (CM) CERTIFICATE: In accordance with the Contract Documents, based on site observation and data comprising this application, the A/E / CM certifies to the owner to the best of the A/E / CM's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with Contract Documents, and the contractor is entitled to payment of the AMOUNT CERTIFIED.

CERTIFICATION OF TIMELY PAYMENTS TO SUBCONTRACTORS AND SUPPLIES: I will make timely payments from the proceeds of this payment to all subcontractors and suppliers in accordance with my contractual arrangements with them. I have made payment from proceeds of prior payments to all subcontractors and suppliers in accordance with my contractual arrangements with them.

Project Manager	Vendor Signature	
	By: _____	
	Printed name	
Program Manager	Title	Date

DC CERTIFICATE: I certify that to the best of my knowledge and belief, this requisition is a true and correct statement of work performed and materials supplied by the contractor and that the work and materials comply with the requirements of the contract. I also certify that all of the required certified payroll affidavits have been received.

Cluster Leader	Deputy Director	Chief Project Delivery Officer
-----------------------	------------------------	---------------------------------------

EXHIBIT D
LIST OF ENVIRONMENTAL REPORTS

- Phase I Environmental Site Assessment (Draft Report), St. Elizabeth's Hospital, East Campus, 2700 Martin Luther King Jr. Avenue SE, Washington D.C., April 2003, by Environmental Resources Management.
- Phase II Environmental Site Assessment, St. Elizabeth's 801 Shelter Relocation Project, dated November 27, 2018, by Hillis-Carnes Capitol Services, PLLC.
- Preliminary Geotechnical Engineering Study, St. Elizabeth's Shelter Relocation, Washington, DC, December 3, 2018, by Hillis-Carnes Capitol Services, PLLC.

**EXHIBIT E
RESERVED**

**EXHIBIT F
RESERVED**

**EXHIBIT G
LIEN WAIVER**

RELEASE OF LIENS AND CLAIMS

Project Name: Contract No.:

Task Order No.:

Contract Date:

Contract Amount:

Date:

Final Release of Liens and Claims:

The undersigned (Company Name), in consideration of payments received and upon receipt of the amount of payment of \$ _____ hereby indemnifies, waives, releases, and holds the District of Columbia harmless for the above referenced project, including all claims, right to liens, terminations, and stop notices upon said premises or the improvements thereon under the statutes of the jurisdiction in which the project is located.

The undersigned further represents and warrants, as of this date, that he/she is duly authorized to sign and execute this Release of Liens and Claims on behalf of (Company Name); that (Company Name) has properly performed all work and furnished all materials of the specified quality in accordance with all contract documents in an acceptable workmanlike manner to the Department of General Services/Construction Division, District of Columbia and that (Company Name) has paid for all labor, including fringe benefits and workers compensation, all materials, equipment, services, taxes, insurance premiums, and bonds (if required) and that any materials supplied to or incorporated in this project have been paid.

(Company Name) is executing this Release of Liens and Claims for the express purpose of inducing the District to make disbursement and payment to (Company Name) of \$_____.

This letter must be signed and notarized below by authorized individuals.

Insert Consultants /Contractors name: (Company Name)

By: _____

Print Name: _____

Title: _____

Date: _____

I, a Notary Public in and for the District of Columbia, hereby certify that, on this (Day) day of (Month), (year), (company representatives name) personally appeared before me, known to me (or satisfactorily proven) to be the person who executed the foregoing Release of Liens and Claims, as of (Company Name) who acknowledged having done so for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public, D.C.

My commission expires: _____

[NOTARIAL SEAL]

**EXHIBIT H
RESERVED**

EXHIBIT I CBE SUBCONTRACTING PLAN



SBE SUBCONTRACTING PLAN

INSTRUCTIONS: All construction & non-construction contracts for **government-assisted projects (agency contracts & private project with District subsidy)** over \$250,000, shall require at least 35% of the amount of the contract (total amount of agency contract or total private project development costs) be subcontracted to Small Business Enterprises (SBE), if insufficient qualified SBEs to Certified Business Enterprises (CBE). The SBE Subcontracting Plan must list all SBE and CBE subcontracts at every tier. Once the SBE Subcontracting Plan is submitted for agency contracts, options & extensions, it can only be amended with DSLBD's consent.

SUBMISSION OF SBE SUBCONTRACTING PLAN:

- ▲ For **agency** solicitations - submit to agency with bid/proposal.
- ▲ For **agency** options & extensions - submit to agency before option or extension exercised.
- ▲ For **private projects** - submit to DSLBD, agency project manager and District of Columbia Auditor, with each quarterly report. As private projects may not have awarded all contracts at the time the District subsidy is granted, the SBE Subcontracting Plan may be submitted simultaneously with each quarterly report and list all SBE/CBE subcontracts executed by the time of submission.

CREDIT: For each subcontract listed on the SBE Subcontracting Plan, credit will only be given for the portion of the subcontract performed, at every tier, by a SBE/CBE using *its own organization and resources*. **COPIES OF EACH FULLY EXECUTED SUBCONTRACT WITH SBEs and CBEs (AT EVERY TIER) MUST BE PROVIDED TO RECEIVE CREDIT.**

EXEMPTION: If the **Beneficiary (Prime Contractor or Developer)** is a CBE and will perform the **ENTIRE government-assisted project** with its *own organization and resources* and will **NOT** subcontract any portion of the services and goods, then the CBE is not required to subcontract 35% to SBEs.

BENEFICIARY (✓ which applies <input type="checkbox"/> Prime Contractor or <input type="checkbox"/> Developer) INFORMATION:		
Company: _____	Contact # _____	Email address: _____
Street Address: _____		
✓ all that applies, Company is:		
<input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification Number: _____		
<input type="checkbox"/> WILL perform the ENTIRE agency contract or private project with its own organization and resources		
<input type="checkbox"/> WILL subcontract a portion of the agency contract or private project		
Company's point of contact for agency contract or private project:		
Point of Contact: _____	Title: _____	
Contact # _____	Email address: _____	
Street Address: _____		

GOVERNMENT-ASSISTED PROJECT (✓ which applies <input type="checkbox"/> Agency Contract or <input type="checkbox"/> Private Project) INFORMATION:	
AGENCY SOLICITATION	PRIVATE PROJECT
Solicitation Number: _____ Solicitation Due Date: _____ Agency: _____ Total Dollar Amount of Contract: \$ _____ <i>*Design-Build must include total contract amount for both design and build phase of project.</i> 35% of Total Dollar Amount of Contract: \$ _____ Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i>	District Subsidy: _____ Agency Providing Subsidy: _____ Amount of District Subsidy: _____ Date District Subsidy Provided: _____ Project Name: _____ Project Address: _____ Total Development Project Budget: \$ _____ <i>(include pre-construction and construction costs)</i> 35% of Total Development Project Budget: \$ _____ Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i>



SBE/ CBE SUBCONTRACTORS (FOR EACH TIER):

SBE/ CBE SUBCONTRACTOR INFORMATION: (For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)			
SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 st , 2 nd , 3 rd , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract: _____ Price to be paid to the SBE/CBE Subcontractor: \$_____		SBE/ CBE Point of Contact Name: _____ Title: _____ Telephone Number: _____ Email Address: _____	
<i>✓all that applies, Subcontractor is:</i> <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification #: _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

SBE/ CBE SUBCONTRACTOR INFORMATION: (For design-build projects, the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the contract amount including total design and build costs) is required to be submitted before entering into a guaranteed maximum price or contract authorizing construction.)			
SBE/ CBE Company	Address/Telephone No./ Email	Subcontractor Tier (1 st , 2 nd , 3 rd , etc.)	Description of Subcontract scope of work to be PERFORMED WITH SBE/CBEs OWN ORGANIZATION & RESOURCES
_____	_____	<u>Select Tier</u>	_____
Period of subcontract: _____ Price to be paid to the SBE/CBE Subcontractor: \$_____		SBE/ CBE Point of Contact Name: _____ Title: _____ Telephone Number: _____ Email Address: _____	
<i>✓all that applies, Subcontractor is:</i> <input type="checkbox"/> a SBE <input type="checkbox"/> a CBE <input type="checkbox"/> CBE Certification # _____ <input type="checkbox"/> SBE/CBE will perform the ENTIRE subcontract with its own organization and resources <input type="checkbox"/> SBE/CBE will subcontract a portion of the subcontract (MUST LIST EACH LOWER TIER SBE/ CBE SUBCONTRACTS)			

I _____ of _____ swear or affirm the above is true and accurate
 (Name) (Title) (Prime Contractor/ Developer)

 (Signature)

 (Date)

Complete additional copies as needed.



AGENCY CONTRACTING OFFICER'S USE ONLY OR **AGENCY PROJECT MANAGER'S USE ONLY**
 (✓ which applies. Only one option should be selected.)

AGENCY CONTRACT AWARD	PRIVATE PROJECT SUBSIDY AWARD
Agency: _____ Prime Contractor: _____ Contract Number: _____ Date SBE Subcontracting Plan Accepted: _____ Date agency contract signed: _____ Anticipated Start Date of Contract: _____ Anticipated End Date of Contract: _____ Total Dollar Amount of Contract: \$ _____ <i>*Design-Build must include total contract amount for both design and build phase of project.</i> 35% of Total Contract Amount: \$ _____ Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every tier)</i> (✓ if applies) <input type="checkbox"/> Base Period Contract – Option/Extension Period: _____ <input type="checkbox"/> Multi-year Contract First year (period) of Contract: _____ Current year (period) of Contract: _____ <input type="checkbox"/> Design-Build --Date of Guaranteed Contract: _____ <input type="checkbox"/> Check if prime contractor is a CBE and will perform the ENTIRE government-assisted project (agency contract) with its own organization and resources and NOT subcontract any portion of services or goods.	Agency Providing Subsidy: _____ District Subsidy: _____ Developer: _____ Amount of District Subsidy: _____ Date District Subsidy Provided/ contract signed: _____ Anticipated Start Date of Project: _____ Anticipated End Date of Project: _____ Project Name: _____ Project Address: _____ Total Development Project Budget: \$ _____ <i>(include pre-construction and construction costs)</i> 35% of Total Development Project Budget: \$ _____ Total Amount of All SBE/CBE subcontracts: \$ _____ <i>(include every lower tier)</i> <input type="checkbox"/> Check if developer is a CBE and will perform the ENTIRE government-assisted project (private project) with its own organization and resources and NOT subcontract any portion of services or goods.
<p><input type="checkbox"/> AGENCY CONTRACTING OFFICER'S AFFIRMATION OR <input type="checkbox"/> AGENCY PROJECT MANAGER'S AFFIRMATION (✓ which applies)</p> <p>The Below Agency Contracting Officer or Agency Project Manager Affirms the following (✓ to affirm):</p> <p><input type="checkbox"/> If the Beneficiary is a CBE, DSLBD was contacted to confirm Beneficiary's CBE certification;</p> <p><input type="checkbox"/> The fully executed Contract (Base or Option or Extension or Multi-Year) or subsidy document, between the Beneficiary and Agency, was emailed to DSLBD @ Compliance.Enforcement@dc.gov within five (5) days of signing;</p> <p><input type="checkbox"/> FOR AGENCY CONTRACT the SBE Subcontracting Plan, submitted by Beneficiary, was emailed to DSLBD @ Compliance.Enforcement@dc.gov within five (5) days of signing the contract between the Beneficiary and Agency.</p> <p>_____ Name of Agency Contracting Officer or Agency Project Manager</p> <p>_____ Title of Agency Contracting Officer or Agency Project Manager</p> <p>_____ Signature</p> <p>_____ Date</p>	

EXHIBIT J
DAVIS-BACON AND RELATED ACTS, PROVISIONS AND PROCEDURES and WAGE RATES

CFR Title 29: Labor

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

§ 5.5 Contract provisions and related matters.

(a) The Contractor shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that

determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The contractor shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

Wages

“General Decision Number: DC20200002 05/15/2020

Superseded General Decision Number: DC20190002

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	
0	01/03/2020
1	01/24/2020
2	02/07/2020
3	02/14/2020
4	02/28/2020
5	03/13/2020
6	04/17/2020
7	05/15/2020

ASBE0024-007 04/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 36.53	16.42+a

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

 ASBE0024-008 04/01/2019

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER	\$ 23.71	7.44+a

Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

ASBE0024-014 04/01/2019

	Rates	Fringes
FIRESTOPPER.....	\$ 29.16	7.98+a

Includes the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the passage of fire, smoke or other gases. The application includes all components involved in creating the rated barrier at perimeter slab edges and exterior cavities, the head of gypsum board or concrete walls, joints between rated wall or floor components, sealing of penetrating items and blank openings.

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

 * BRDC0001-002 05/03/2020

	Rates	Fringes
BRICKLAYER \$ 33.00 12.09		

 CARP0197-011 05/01/2019

	Rates	Fringes	
CARPENTER, Hanging, Form Work, and Soft Floor Laying-Carpet	\$ 29.00	12.71	Includes Drywall

 CARP0219-001 05/01/2019

	Rates	Fringes
MILLWRIGHT \$ 35.99 11.23		

CARP0441-001 05/01/2018

	Rates	Fringes
PILEDRIVERMAN.....	\$ 30.94	11.45

ELEC0026-016 11/04/2019

	Rates	Fringes
ELECTRICIAN, Installation of HVAC/Temperature Controls.....	\$ 46.85	19.45

Includes

ELEC0026-017 09/02/2019

	Rates	Fringes
ELECTRICAL INSTALLER (Sound & Communication Systems).....	\$ 28.55	11.28

SCOPE OF WORK: Includes low voltage construction, installation, maintenance and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, VSAT, bypass, CATV, WAN (Wide area networks), LAN (Local area networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in industrial applications such as assembly lines, robotics and computer controller manufacturing systems. The installation of conduit and/or raceways shall be installed by Inside Wiremen. On sites where there is no Inside Wireman employed, the Teledata Technician may install raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

ELEV0010-001 01/01/2020

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 47.02	34.765+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

 IRON0005-005 06/01/2019

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 32.50	22.385

 IRON0005-012 05/01/2019

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 28.95	21.08

 LABO0011-009 06/01/2019

	Rates	Fringes
LABORER: Skilled	\$ 25.05	8.52

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer (excluding roofing), open caisson, test pit, underpinning, pier hole and ditches, ladders and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, demolition.

 MARB0002-004 04/28/2019

	Rates	Fringes
MARBLE/STONE MASON	\$ 38.81	18.29

INCLUDING pointing, caulking and cleaning of All types of masonry, brick, stone and cement EXCEPT pointing, caulking, cleaning of existing masonry, brick, stone and cement (restoration work)

 MARB0003-006 04/28/2019

	Rates	Fringes
TERRAZZO WORKER/SETTER	\$ 29.12	12.27

 MARB0003-007 04/28/2019

	Rates	Fringes
TERRAZZO FINISHER	\$ 24.10	11.24

 MARB0003-008 04/28/2019

	Rates	Fringes
--	-------	---------

TILE SETTER..... \$ 29.12 12.27

MARB0003-009 04/28/2019

TILE FINISHER..... Rates Fringes
\$ 24.10 11.24

PAIN0051-014 06/01/2018

GLAZIER
Rates Fringes
Glazing Contracts \$2 million and under..... \$ 26.07 12.15
Glazing Contracts over \$2 million..... \$ 30.31 12.15

PAIN0051-015 06/01/2018

PAINTER
Rates Fringes
Brush, Roller, Spray and Drywall Finisher \$ 25.06 9.76

PLAS0891-005 07/01/2018

PLASTERER Rates Fringes
\$ 29.53 6.80

PLAS0891-006 02/01/2020

CEMENT MASON/CONCRETE FINISHER... Rates Fringes
\$ 28.82 11.68

PLAS0891-007 08/01/2016

FIREPROOFER
Rates Fringes
Handler \$ 16.50 4.89
Mixer/Pump..... \$ 18.50 4.89
Sprayer..... \$ 23.00 4.89

Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refraction work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.

PLUM0005-010 08/01/2019

Rates Fringes

PLUMBER..... \$ 43.92 18.95+a
 a. PAID HOLIDAYS: Labor Day, Veterans’ Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year’s Day, Martin Luther King’s Birthday, Memorial Day and the Fourth of July.

 PLUM0602-008 08/01/2019

Rates Fringes

PIPEFITTER, Includes HVAC

Pipe Installation..... \$ 43.14 21.87+a

a. PAID HOLIDAYS: New Year’s Day, Martin Luther King’s Birthday, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

 ROOF0030-016 07/01/2019

Rates Fringes

ROOFER \$ 30.25 13.24

SFDC0669-002 04/01/2020

Rates Fringes

SPRINKLER FITTER (Fire Sprinklers) \$ 35.70 23.60

SHEE0100-015 07/01/2019

Rates Fringes

SHEET METAL WORKER (Including

HVAC Duct Installation)..... \$ 40.77 21.35+a

a. PAID HOLIDAYS: New Year’s Day, Martin Luther King’s Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

 SUDC2009-003 05/19/2009

Rates Fringes

LABORER: Common or General..... \$ 13.04 2.80

LABORER: Mason Tender - Cement/Concrete \$ 15.40 2.85

LABORER: Mason Tender for pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking and cleaning of new or replacement masonry, brick, stone and cement..... \$ 11.67

POINTER, CAULKER, CLEANER, Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing,

caulking, cleaning of new or
replacement
masonry, brick, stone or cement \$ 18.88

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ““identifiers”” that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ““SU”” or ““UAVG”” denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the “SU” identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

EXHIBIT K
CONSTRUCTION CONTRACT SUBCONTRACT REQUIREMENTS

In addition to the other requirements set forth in the Agreement that shall be included in the Architect and Contractor agreements, the following shall be inserted into the Architect (to the extent Architect will be permitted to have any subcontractors) and each Contractor's contracts and subcontracts (the "Contractor" shall also include Architect, as applicable, for this Exhibit).

- 1) to the extent of the work or supply within the agreement's scope, the subcontractor or supplier is bound to Contractor for the performance of all obligations which Program Manager owes District under the Agreement;
- 2) that the subcontractor or supplier is not in privity with District and shall not seek compensation directly from District on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- 3) that the subcontractor or supplier consents to assignment of its agreement to District or Program Manager, at District's sole option, if Program Manager or Contractor, as applicable, is terminated for default;
- 4) that the subcontractor or supplier shall comply immediately with a written order from District to Program Manager or Contractor, as applicable, to suspend or stop work;
- 5) that the subcontractor or supplier shall maintain records of all applicable Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in this Agreement and requiring the subcontractor or supplier to make those records available for review or audit by District during that time;
- 6) that the subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of District of Columbia (This provision is not applicable to supply agreements);
- 7) that, if District terminates the Agreement for convenience and does not require Program Manger to assign the Contracts, Program Manager or Contractor, as applicable, may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the subcontractor or supplier, and that the subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Agreement.
- 8) that District shall have the right to enter into a contract with the subcontractor or supplier for the same price as its contract or subcontract or supply agreement price less amounts already paid, if Program Manager or Contractor, as applicable, terminates this Agreement or files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

- 9) that the subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- 10) a provision requiring that subcontractors and suppliers promptly pay subcontractors and suppliers at lower tiers, imposing upon the subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier subcontractors or suppliers due to a subcontractor's or supplier's failure to pay them in timely fashion;
- 11) a provision requiring that all subcontractors at all tiers comply with the provisions of economic inclusion goals; provided, however, that nothing in this provision shall be deemed to excuse each Contractor and subcontractor from achieving the CBE subcontracting goals for the Project;
- 12) a provision which allows Program Manager or Contractor, as applicable, to withhold payment from the subcontractor if the subcontractor does not meet the requirements of the subcontract;
- 13) lien and claim release and waiver provisions substantially identical to those in this Agreement at each payment to such subcontractor.
- 14) Within seven (7) days of receiving any payment from District that includes amounts attributable to the Work performed or materials or equipment supplied by a subcontractor or supplier, Program Manager or Contractor, as applicable, shall either pay the subcontractor or supplier for its proportionate share of the amount paid to Program Manager or Contractor, as applicable, for the subcontractor's or supplier's Work or materials or equipment, or notify District and the subcontractor or supplier, in writing, of Program Manager or Contractor, as applicable, intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to Program Manager or Contractor, as applicable, under the Agreement shall be used first to pay amounts due to subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be used for other items. Monies paid by joint check shall be deemed to have been paid fully to the subcontractor or supplier named as a joint payee, unless District agrees otherwise in writing. Any interest paid to subcontractors or suppliers because Program Manager or Contractor, as applicable, has failed to pay them in timely fashion shall not be reimbursable as part of the Cost of the Project.
- 15) Program Manager or Contractor, as applicable, shall not enter into any profit sharing, rebate, or similar arrangement with any subcontractor or supplier at any tier with respect to the Project or the Work to be carried out for the Project.
- 16) District has the right to contact subcontractors or suppliers at all tiers, or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the subcontractors or suppliers at all tiers their projections of the cost to complete their work or to supply their material or

equipment, or the existence of any claims or disputes. In doing so District shall not issue any directions to subcontractors or Suppliers at any tier.

- 17) If it comes to District's attention that a subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if Program Manager or Contractor, as applicable, fails to cure the problem within five (5) days after District gives it written notice of the failure to pay, District may, in District's sole discretion make payments on behalf of Program Manager or Contractor to the subcontractor or supplier and Program Manager or Contractor, as applicable, by joint check.

Exhibit L
Project Scope and Initial Work, Cash Flow, and Estimated Schedule of the
GW Health Hospital at St. Elizabeths

The Work shall include designing, developing, constructing and commissioning to Final Completion on the St Elizabeths East Campus:

- i. A new, \$293 million state-of-the-art Inpatient Hospital (community hospital) with a level III verified trauma center;
- ii. A new \$69 million Ambulatory Facility (ambulatory pavilion) to support a continuum of care; and
- iii. A new \$13 million Parking Facility (parking facility/garage) to further facilitate access and convenience of care. The parking garage shall accommodate 500 spaces to be used by patients, visitors and staff, and others with business at the inpatient hospital or ambulatory pavilion.

These three assets and their required furniture, fixtures and equipment, including Information Technology shall comprise the Project as further defined in this Agreement and shall be constructed on Square 5868S, Lot 859.

A new hospital at St. Elizabeths will improve access to high quality, integrated care for all District residents and help address disparities in health outcomes.

The Inpatient Hospital, Ambulatory Facility, and Parking Facility shall be designed and constructed in full compliance with all governing bodies both federal and local. Within the healthcare setting, the District of Columbia has adopted the Facility Guidelines Institute (FGI) 2018 Guidelines. FGI is the healthcare industry's most widely recognized source for healthcare facilities, including both inpatient and outpatient buildings. The facilities shall also be designed and constructed so that the inpatient hospital and ambulatory pavilion can provide, as of the opening date of each facility, identified as the Occupancy/ Final Completion Date in this Exhibit, the Services (as defined in the Hospital Operations Agreement), including the Clinical Services to be provided at such facility pursuant to the Hospital Operations Agreement (Section 3.4.1). The Final Completion Date shall not be extended beyond September 30, 2026 unless amended to a later specific date as agreed to by the Parties in writing as an amendment to this Agreement. This Exhibit also identifies the Substantial Completion Date.

The schedule section of this Exhibit includes current projected milestones and estimated durations based upon input and experience from both the District and UHS. The schedule is subject to regulatory approvals (which are currently estimated based upon UHS and District experience) and amendment per the Agreement.

The Inpatient Hospital shall include a total of 136 licensed inpatient beds. Of the total bed count, 120 beds (one bed per room) shall be for acute services including women's health, maternal services including newborn deliveries and a Level II NICU, general medical-surgical/operating,

and an intensive care unit. The remaining 16 beds shall be dedicated to behavioral health patients. A detailed breakdown of bed count by service line is included on page 3 of this Exhibit. The inpatient hospital shall include an emergency department that shall be a verified level III trauma center. It will also include a pediatric emergency department. Diagnostic and treatment services and spaces shall include the latest in equipment technology necessary for medical imaging, surgery, and procedures. Further detail on these spaces and requisite equipment is included on page 3 of this Exhibit.

All of the patient beds, procedure and diagnostic areas shall be supported by an onsite central energy plant, central sterile processing, dietary services, environmental services, administration and other necessary functions needed to operate a hospital. Patients, families and visitors will be comforted by the public areas, food service and other amenities such as reception, chapel, and gift shop. As the hospital operations grow to full capacity in future years, the building structure shall have been designed and constructed to allow for future vertical expansion that shall support an additional floor with 60 beds, for an eventual operating total of 196 beds.

The Ambulatory Facility shall include outpatient services to complement what is offered in the main hospital, but in a lower acuity setting consistent with current practices and technology, enabling more efficient and patient-centered delivery of care. Spaces shall specifically include an outpatient clinic with physician offices and exam rooms, an imaging department, comprehensive rehabilitation services, surgery, and conference/ community/ education spaces. A \$5M allowance is included for a cancer program with exact services to be determined. Cancer services may consist of exam and consult spaces, medical oncology, infusion, hemodialysis, or chemotherapy (linear accelerator is not included). Further detail on the Ambulatory Facility spaces and requisite equipment is included on page 3 of this Exhibit.

The Project Budget, as shown on page 3 of this Exhibit, also identifies as part of the Work:

- An optional helipad. The helipad will be constructed if further analysis of the option identifies it as feasible based on Federal and local government regulatory approval, health care need and community engagement.
- The acquisition and installation of all furniture, fixtures and equipment and Information Technology equipment.
- Onsite (Lot A) roads, walkways, parking, utilities and landscaping that connects to the rest of the St. Elizabeths campus and the nearby Congress Heights metro station.

During design and construction, the use of Building Information Modeling (BIM) shall be implemented as a tool to facilitate cost effective and well-coordinated construction. Further, upon completion of the building, the BIM model can be used as an asset-management tool for operations and maintenance.

**Exhibit L: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the
GW Health Hospital at St. Elizabeths**



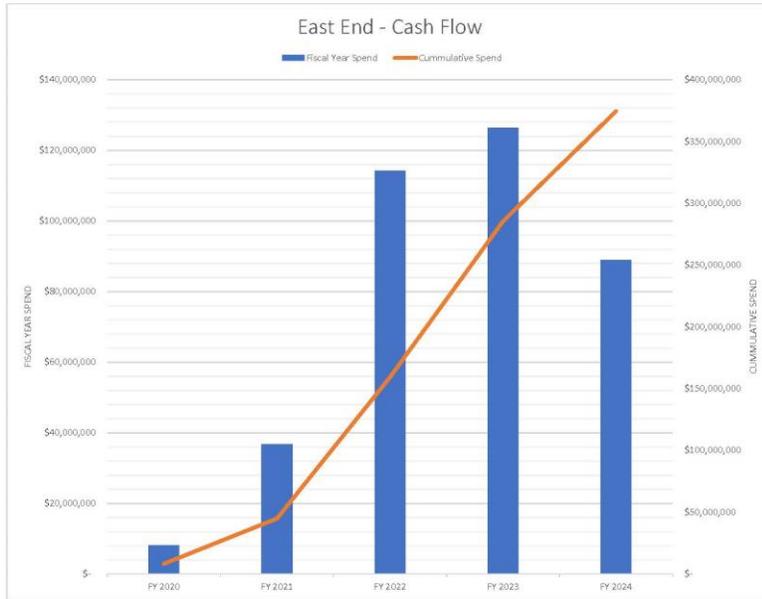
GW Health Hospital at St. Elizabeths
PROJECT BUDGET - 6/1/2020

PROGRAM 136 (16 BEHAVIORAL HEALTH)	PRICE	SIZE (SF)	\$ / SF	\$ / BED	COMMENTS
HOSPITAL	\$ 235,422,260	251,049	\$ 938	\$ 1,731,046	on 136 beds
Women's Services - 20 Beds (detailed below)					
AntePartum (2 Beds)					
Labor & Delivery (4 Rooms)					
Labor & Delivery (2 C-Section OR's)					
PostPartum (12 Beds)					
NICU - Level II (6 Beds)					
Holding Nursery (13 Bassinets)					
Med/Surg - 80 Beds					
ICU - 20 Beds					
BH - 16 Beds					
Shell - 0 Beds					
Emergency Department					
Adult - 30 Treatment Rooms (verified Level III Trauma Center)					
Children - 20 Treatment Rooms					
Imaging					
MRI (1)					
CT (1)					
Rad (1)					
Fluoro (1)					
Ultrasound (1)					
Mammography (1)					
Surgery					
General OR's (3) - Does Not Include Open Heart, Neuro, or other Complex Surgical Cases					
Shell OR's (2)					
Hybrid OR (0) - Not Included in Program					
Cath / IR (1) - with Bi-Plane					
Endo (1)					
Furniture, Fixtures, Equipment	\$ 42,734,412				
Information Technology Equipment	\$ 10,248,000				
HOSPITAL STUB FOR FUTURE 5TH FLOOR (60 BEDS)	\$ 3,000,000				
OPTIONAL HELIPAD - LOCATED ON GRADE	\$ 1,981,793				
PARKING DECK 500	\$ 12,500,000			\$25,000 per space x 500 spaces	
AMBULATORY V2	\$ 50,243,076	77,164	\$ 651	N/A	
Outpatient Clinic - Program TBD					
Cancer Program Allowance (Construction & Equipment)	\$ 5,055,226				
Imaging					
CT (1)					
Rad (1)					
Ultrasound (1)					
Shell (1)					
Cardiac Rehab					
Exam (2)					
EKG (1)					
Phlebotomy (2)					
Surgery					
General OR's (2)					
Minor Procedure (2)					
Conference / Education					
Furniture, Fixtures, Equipment	\$ 10,993,971				
Information Technology Equipment	\$ 2,500,000				
TOTAL	\$ 374,678,738				

Exhibit L: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the
GW Health Hospital at St. Elizabeths

6/1/2020

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Grand Total
	Oct 19 - Sept 20	Oct 20 - Sept 21	Oct 21 - Sept 22	Oct 22 - Sept 23	Oct 23 - Sept 24	
Fiscal Year Spend	\$ 8,204,294	\$ 36,774,371	\$ 114,314,396	\$ 126,424,957	\$ 88,960,719	\$ 374,678,738
Cummulative Spend	\$ 8,204,294	\$ 44,978,666	\$ 159,293,062	\$ 285,718,019	\$ 374,678,738	



**Exhibit L: Project Scope, Initial Work, Cash Flow, and Estimated Schedule of the
GW Health Hospital at St. Elizabeths
June 1, 2020 v1.1**

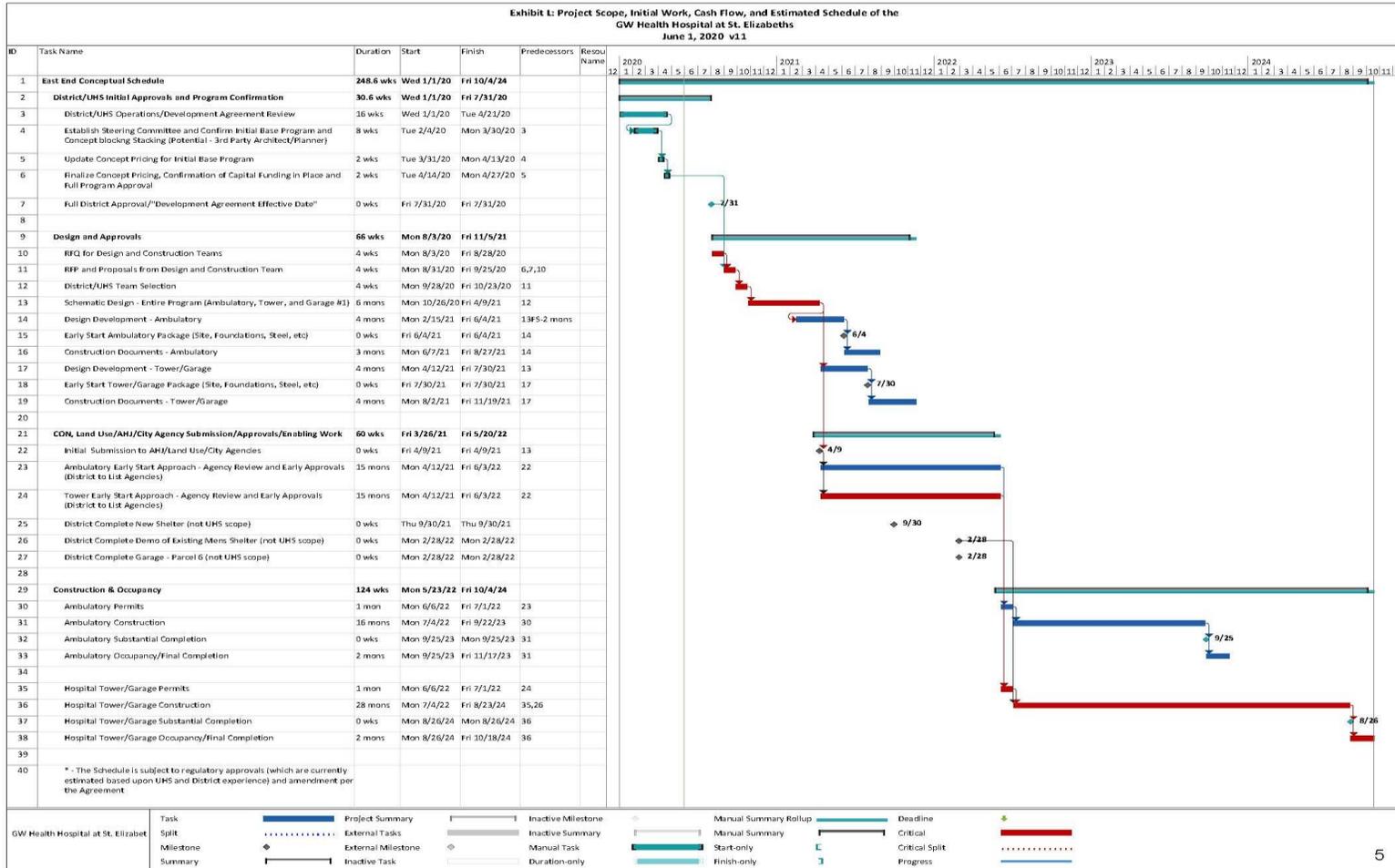


EXHIBIT M DISTRICT LAND USE APPROVALS

Land Use Approvals and Entitlements.

The Parties acknowledge that the design for the Project may require various land use approvals. The Parties anticipate that the approval of the following bodies may be required:

- Advisory Council on Historic Preservation - All new construction on the East Campus has to be submitted to the ACH under the terms of the 1987 deed.
 - ACHP has 30 days to review submissions.
- Commission on Fine Arts (CFA) review is also required, because this is a city project and city property.
 - The deadline for CFA submissions is two weeks before their monthly meeting.
 - CFA will take at least two reviews, concept and final (i.e., permit-level).
 - <https://www.cfa.gov/project-review/government/how-submit>
- Historic Preservation Review Board (HPRB) review will be necessary.
 - HPRB has deadlines approximately a month ahead of their meetings
 - [HPRB Concept approval schedule and application](#)
- National Capital Planning Commission (NCPC) has advisory review of projects on District land outside the central area, and the hospital use was not in the master plan but is a matter-of-right use in zoning.
 - NCPC will presumably approve with something less than permit-level drawings.
 - NCPC submissions schedule is on their website www.ncpc.gov/review/deadlines/ and should be made roughly a month ahead of time.

The applicant should submit a concept to all the agencies at about the same time. Consultation before that time can be conducted through a joint meeting. The reviews should all be concurrent, as applicable, as the entities listed will be reviewing the same concept.

The A/E shall endeavor to obtain from the bodies listed above the approvals required in order for the Project to proceed. The A/E shall utilize as part of their team necessary consultants, including land use attorneys to prepare such materials and make such presentations as necessary to obtain the required land use and entitlement approvals. The A/E acknowledges that the aspects of the design for the Project may need to be revised or redesigned in order to obtain such approvals, and the fixed fee set forth herein includes sufficient amounts for such redesign.

Permits.

In addition to securing land use approvals from the entities listed above, the Parties anticipate that permits will be required from the following bodies:

- District of Columbia Department of Consumer and Regulatory Affairs (DCRA)

- District of Columbia Department of Energy and the Environment (DOEE)
- District of Columbia Department of Transportation (DDOT)
- District of Columbia Water and Sewer Authority (DC Water)
- Washington Area Transit Authority (WMATA)

The A/E will be required to respond to comments provided by the regulatory agencies on the design documents as contemplated in this Agreement. The A/E shall be responsible for preparing and submitting all of the required permit applications that are necessary to complete the Project. The A/E shall develop a list of the required permits and shall track the progress of all such permits through the review process. The A/E shall engage such permit expeditors as the A/E deems necessary or appropriate in light of the Project's schedule. The A/E shall be responsible for obtaining any building permits and clearances.

HOSPITAL OPERATIONS AGREEMENT

between

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

and

UHS EAST END SUB, LLC

Dated as of _____, 20____

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	2
ARTICLE 2 PRE-OPENING COVENANTS OF OPERATING ENTITY.....	2
2.1. Acquisition of Assets and Licenses	2
ARTICLE 3 OPERATIONS COVENANTS.....	4
3.1. Operating Services	4
3.2. Maintenance of Facilities	4
3.3. Personnel.....	4
3.4. Service Lines.....	5
3.5. Community Engagement	6
3.6. Population Health.....	7
3.7. Uncompensated Care and Community Benefits	7
3.8. Teaching and Research	7
3.9. Branding.....	8
3.10. Compliance with Law	8
3.11. Licenses.....	8
3.12. Labor	8
ARTICLE 4 SERVICE STANDARDS AND QUALITY STANDARDS	9
4.1. Services and Quality Programs	9
4.2. Community Representation in Quality Programs	9
4.3. Quality Reporting.....	9
4.4. Identification of Quality Standards Gaps.....	10
ARTICLE 5 GOVERNANCE	10
5.1. Governing Board.....	10
5.2. Joint Meetings.....	10
5.3. Reserved Rights of the District.....	11
ARTICLE 6 FINANCIAL COMMITMENTS	12
6.1. The District’s Commitments.....	12
6.2. Operating Entity’s Commitments	15
ARTICLE 7 HEALTH CARE INFRASTRUCTURE INVESTMENTS.....	15
7.1. Health Care Infrastructure Investments	15
7.2. Investment Timeline	15

7.3.	Ward 7 and Ward 8 Investments.....	15
7.4.	Additional Ward 7 and 8 Investments	16
7.5.	Additional Investments	16
7.6.	In-Kind Investments.....	17
ARTICLE 8 COMMUNITY INVESTMENTS.....		17
8.1.	Community Commitments.....	17
8.2.	Hiring of District Residents	17
8.3.	Utilization of District Businesses.....	17
8.4.	Workforce Development.....	18
ARTICLE 9 TERM AND TERMINATION		19
9.1.	Term.....	19
9.2.	Termination.....	19
9.3.	Effect of Termination.....	20
9.4.	Effect of Purchase Option or Modified Lease Option Exercise	20
9.5.	Remedies for Foggy Bottom Facility.....	20
ARTICLE 10 DISPUTE RESOLUTION		21
ARTICLE 11 INDEMNIFICATION.....		21
11.1.	Indemnification by Operating Entity	21
11.2.	No Liability	21
ARTICLE 12 GENERAL PROVISIONS		21
12.1.	Entire Agreement	21
12.2.	Amendments	21
12.3.	Severability	22
12.4.	Counterparts.....	22
12.5.	Incorporation of Exhibits; Recitals	22
12.6.	No Implied Waivers.....	22
12.7.	Interpretations	22
12.8.	Time of Performance	23
12.9.	Notices	23
12.10.	Third-Party Beneficiaries.....	24
12.11.	Waiver of Jury Trial.....	24
12.12.	Anti-Deficiency Limitations	24
12.13.	No Joint Venture	24
12.14.	Litigation.....	24

12.15.	Procurement of Materials and Supplies	24
12.16.	Joint Preparation	24
12.17.	Time of the Essence; Standard of Performance	25
12.18.	Further Assurances.....	25
12.19.	Law Applicable; Forum for Disputes	25
12.20.	Conflict of Interests; Representatives Not Individually Liable	25
12.21.	Survival.....	25
12.22.	Assignment	25
12.23.	Affirmative Action.....	26
12.24.	Guaranty of Operating Entity Obligations	26
Exhibit A	Definitions.....	A-1
Exhibit B	Clinical Services.....	B-1
Exhibit C	Form Of Annual Report.....	C-1
Exhibit D	Operating Entity Estimated Minimum Amount Of Health Care Infrastructure Investments	D-1

HOSPITAL OPERATIONS AGREEMENT

This Hospital Operations Agreement (this “**Agreement**”) is entered into as of _____, 20____ (the “**Effective Date**”), by and between the **GOVERNMENT OF THE DISTRICT OF COLUMBIA** (the “**District**”) and UHS East End Sub, LLC, a wholly-owned subsidiary of Universal Health Services, Inc. (“**UHS**”) (including any permitted successor or assignee, “**Operating Entity**”). The District and Operating Entity each is referred to individually herein as a “**Party**” and collectively are referred to as the “**Parties**” to this Agreement.

RECITALS

WHEREAS, the Parties seek to establish a new acute-care community hospital that will coordinate with existing and new health care providers within Washington, D.C., to establish solutions to the challenges of health access, equity and quality for residents of Ward 7 and Ward 8 in Washington, D.C., and seek to establish a comprehensive system of care that will improve the health of residents in Ward 7 and Ward 8 and throughout Washington, D.C.;

WHEREAS, a goal of the District is to have built a new, financially strong, state-of-the-art community hospital, which will be composed, on the St. Elizabeths East Campus, of an inpatient facility (the “**Inpatient Hospital**”), and associated ambulatory pavilion and outpatient facilities (the “**Ambulatory Facility**,” together with the Inpatient Hospital, the “**Hospital**”) and multistory parking garage that will primarily serve the Hospital, its patients, visitors, and staff, and others with business at the Hospital (the “**Parking Facility**”), and to have the Hospital operated, maintained, and governed by an existing, highly qualified, financially strong, private third-party entity with significant health care delivery experience and a robust health delivery system;

WHEREAS, George Washington University Hospital (“**GWUH**”) is owned and operated by District Hospital Partners, L.P. (“**DHP**”), a partnership between The George Washington University (“**GW**”) and UHS of D.C., Inc., an affiliate of UHS, one of the nation’s largest health care management companies;

WHEREAS, GWUH, a 395-bed tertiary/quaternary care teaching hospital located at 900 23rd Street, NW (the “**Foggy Bottom Hospital**”), with associated ambulatory and outpatient facilities (together with the Foggy Bottom Hospital, the “**Foggy Bottom Facility**”), is a key component of an integrated health care delivery system;

WHEREAS, (a) Operating Entity has agreed to lease, operate, and maintain the Hospital and Parking Facility pursuant to the terms set forth herein and in the Implementing Agreements and the Collaboration Agreement (defined herein) and UHS has agreed to guarantee the performance of Operating Entity under this Agreement, and (b) UHS Building Solutions, Inc., an affiliate of UHS (“**Development Entity**”), has agreed to serve as Program Manager for the design and construction of the Hospital and Parking Facility, in order to serve Washington, D.C. residents, expand and develop GWUH’s service area, and provide a broad range of services consistent with its standing as a key component of a premier health system;

WHEREAS, Operating Entity will operate the Hospital in coordination with the Foggy Bottom Facility, which will provide the benefits of a tertiary/quaternary teaching hospital’s

expertise in high-acuity services and promote multi-sector collaboration with, and across, service systems and sectors; and

WHEREAS, Operating Entity will establish the Hospital to be an integrated part of the integrated health facility system with a full continuum of care coordinated with the Foggy Bottom Facility's higher-level tertiary and quaternary care offerings and clinical faculty partners;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the District and Operating Entity set forth their understandings with respect to the operation of the Hospital and the Parking Facility described below:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement, capitalized terms used in this Agreement shall have the meanings set forth in Exhibit A unless otherwise specified or required by the context in which the word appears.

ARTICLE 2

PRE-OPENING COVENANTS OF OPERATING ENTITY

2.1. Acquisition of Assets and Licenses. As set forth in the Development Agreement, the Parties intend for the Ambulatory Facility to open and begin treating patients in calendar year 2023, for the Inpatient Hospital to open and begin treating patients in calendar year 2024, and for the Parking Facility to open and begin operations on or before calendar year 2024 (the "**Parking Facility Opening Date**"). The date on which the Ambulatory Facility (a) has received all licensing, accreditation, and regulatory authority to open doors and treat its first patient, and (b) treats its first patient shall be the "**Ambulatory Facility Opening Date,**" and the date on which the Inpatient Hospital (x) has received all licensing, accreditation, and regulatory authority to open its doors and treat its first patient, and (y) admits its first inpatient shall be the "**Hospital Opening Date.**" Prior to the Ambulatory Facility Opening Date, the Hospital Opening Date, and the Parking Facility Opening Date, Operating Entity shall undertake all actions as are reasonable and necessary under Applicable Laws, to open, as applicable, the Ambulatory Facility, the Inpatient Hospital, and Parking Facility and to operate each consistent with the terms of this Agreement. Such actions include, without limitation, the following, and shall be completed with respect to the Ambulatory Facility, prior to the Ambulatory Facility Opening Date, with respect to the Inpatient Hospital, prior to the Hospital Opening Date, and with respect to the Parking Facility, prior to the Parking Facility Opening Date:

2.1.1 Operating Entity shall acquire, whether through lease, ownership, or otherwise, of all assets, supplies, equipment, fixtures, and other materials necessary to operate the Hospital in accordance with the Service Standards (the "**Hospital Necessities**") and the Parking Facility consistent with industry standards; provided that the Parties recognize that (a) the actual physical plants of the Hospital and Parking Facility, as well as all furniture, fixtures, and equipment necessary for opening, will be owned by the District and leased to Operating Entity under the

Lease Agreement (except that any furniture, fixtures, or equipment that is part of any electronic health record system used at the Hospital (the “**EHR Equipment**”) will be solely the property of Operating Entity, and Operating Entity shall have full responsibility for the acquisition of the EHR Equipment, which acquisition shall be part of the Health Care Infrastructure Investments under ARTICLE 7 of this Agreement), and (b) payment for the acquisition of certain of the Hospital Necessities may be provided for under the Development Agreement;

2.1.2 With the exception of those approvals the District is required to obtain under the Development Agreement and any Certificate of Need (“**CON**”) from the District necessary for the construction and opening of the Hospital, which shall be obtained consistent with the process set out in Section 2.1.3, Operating Entity shall obtain all necessary licenses, permits, authorizations, certifications, consents, approvals, and certifications necessary to operate (a) the Inpatient Hospital as a General Hospital in accordance with the Service Standards, including, without limitation, certification to participate in Medicare, Medicaid, or any other federal or District health care benefit program, (b) the Ambulatory Facility in accordance with the Service Standards (collectively, the “**Hospital Licenses**”), and (c) the Parking Facility consistent with industry standards (the “**Parking Licenses**”);

2.1.3 Operating Entity shall cooperate with the District, which is responsible for submitting the CON application and paying the CON application submission fee, to obtain the CON for construction of the Hospital, including, at Operating Entity’s cost and expense, completing the CON application, supporting the District in its presentation of the CON application to the State Health Planning and Development Agency (“**SHPDA**”), assisting the District in its responses to any SHPDA (or other regulatory agency) requests for additional information associated with the CON and any other reasonable requests of the District necessary to facilitate approval of the CON application;

2.1.4 Operating Entity shall (a) develop credentialing policies and procedures for physicians providing Clinical Services pursuant to this Agreement that are consistent with GWUH’s credentialing policies and procedures applicable at the Foggy Bottom Hospital (the “**Credentialing Standards**”), (b) develop medical staff bylaws for the medical staff at the Hospital that are substantially the same as the medical staff bylaws applicable at the Foggy Bottom Hospital (the “**Medical Staff Bylaws**”), and (c) coordinate and arrange for the physician services to be provided at the Hospital pursuant to Section 3.3.1 below;

2.1.5 Operating Entity shall recruit, hire, and arrange for the staffing of all non-physician services at the Hospital pursuant to Section 3.3.2; and

2.1.6 Operating Entity shall take any and all other actions necessary to (a) cooperate with the Development Entity for construction of the Hospital and Parking Facility in accordance with the Development Agreement; (b) open the Ambulatory Facility as of the Ambulatory Facility Opening Date, the Inpatient Hospital as of the Hospital Opening Date, and the Parking Facility as of the Parking Facility Opening Date; and (c) operate each in accordance with the terms set forth herein and Applicable Law.

ARTICLE 3

OPERATIONS COVENANTS

3.1. Operating Services. At all times during the Term of this Agreement, Operating Entity shall operate, manage, and maintain the Hospital and the Parking Facility pursuant to the terms set forth herein. As the operator of the Hospital and Parking Facility, Operating Entity shall provide or arrange for all administrative, management, and operating services (including the Clinical Services, collectively, the “**Services**”) reasonable and necessary to operate the Hospital and Parking Facility in accordance with the terms hereof, including, without limitation, the provision of the Clinical Services and other requirements set forth in Section 3.4 and all services required under applicable licensure, accreditation, and industry standards. Operating Entity shall act in a professional, competent, and efficient manner and take all actions necessary to provide a quality of service at the Hospital consistent with the Service Standards and the Quality Standards and at the Parking Facility consistent with industry standards.

3.2. Maintenance of Facilities. Operating Entity shall, at its cost and expense, provide and maintain the medical and general space, facilities, and Hospital Necessities as reasonably necessary for Operating Entity to provide the Services hereunder at a quality consistent with the Service Standards and the Quality Standards and operate the Parking Facility consistent with industry standards. Operating Entity shall maintain and replace such space, facilities, and Hospital Necessities in a manner consistent with the Foggy Bottom Facility, and with such replacement capital and equipment of a quality equivalent to the quality of replacement capital and equipment at the Foggy Bottom Facility and consistent with the requirements of TJC, the Centers for Medicare and Medicaid Services, the District Department of Health, and other relevant federal and state regulatory bodies, recognizing (a) the case-mix adjusted utilization requirements of each facility with respect to capital and equipment, (b) the clinical distinctions between a community, academic-affiliated hospital and a tertiary/quaternary academic medical center, and (c) the average age of plant at each respective facility. Notwithstanding the foregoing, the Parties recognize that the initial outfitting of the Hospital and Parking Facility, according to the Phases set forth in the Development Agreement, with fixtures and medical equipment necessary to operate the Ambulatory Facility on the Ambulatory Facility Opening Date, the Inpatient Hospital on the Hospital Opening Date, and the Parking Facility on the Parking Facility Opening Date consistent with the terms set forth herein is as set forth in the Development Agreement.

3.3. Personnel. Subject to complying with the terms set forth herein, Operating Entity shall be solely responsible for all personnel providing Services to, or working at, the Hospital and Parking Facility, whether as employees, independent contractors, or otherwise. For the avoidance of doubt, the District shall not be responsible for employing, and shall not employ, any personnel providing Services at the Hospital or Parking Facility.

3.3.1 Medical Staff. Operating Entity shall coordinate and arrange for the provision of such medical staff membership and coverage for the service lines as set forth in Section 3.4 as is reasonably necessary to provide the Services hereunder at a quality that is consistent with the Service Standards and the Quality Standards. At all times, the Medical Staff Bylaws and Credentialing Standards at the Hospital shall be consistent with the medical staff bylaws and credentialing standards at the Foggy Bottom Facility. Except as otherwise provided

herein, physician services at the Hospital shall be provided by physicians employed by GW's affiliated physician practice plan, Medical Faculty Associates, Inc. ("MFA"). Such physician services shall be governed by a separate physician services agreement to be entered into by the GW, UHS, and MFA. Notwithstanding the foregoing, (a) in the event that MFA is unwilling or unable to provide a given physician service or services, Operating Entity may obtain such physician service or services elsewhere, whether through contract, employment, or other means, provided that (i) at all times, any physicians providing physician services at the Hospital meet the Credentialing Standards and (ii) Operating Entity continues to operate the Hospital as an integrated component of the integrated health facility system with care coordinated with the Foggy Bottom Facility, and (b) Operating Entity shall permit and encourage community (*i.e.*, non-MFA) physicians who meet the Credentialing Standards to provide physician services at the Hospital. For purposes of clause (a)(ii) in this Section, operating as an integrated component of the integrated health facility system with care coordinated with the Foggy Bottom Facility shall include, without limitation, use of a consistent, interoperable electronic medical records system, integrated information technology systems, including scheduling, shared care coordination and care management processes, coordinated pathways for the treatment of high risk, high acuity patients, including the transfer of patients between the facilities according to acuity and medical need, consistent clinical protocols, shared branding pursuant to Section 3.9 and coordinated population health and health disparity initiatives. Operating Entity shall enter into such agreements and arrangements as are necessary and appropriate to assure the provision of any such physician services by MFA, other physicians under subsection (a) herein, and, as applicable, qualified community physicians.

3.3.2 *Non-Physician Personnel.* Operating Entity shall (a) provide such clinical and administrative support staff for the Service Lines as is reasonably necessary to provide the Services hereunder at a quality that is consistent with the Service Standards and the Quality Standards and (b) take such actions necessary to recruit and hire such clinical and administrative support staff. Operating Entity shall administer, manage, supervise, and direct all personnel and any independent contractors as to their duties and their performance in accordance with this Agreement.

3.3.3 *Personnel Standards.* Operating Entity shall ensure that all personnel (a) are appropriately qualified and experienced to undertake their tasks; (b) are, where necessary, licensed and certified in accordance with Applicable Law; (c) have, where necessary, any required medical or professional staff privileges at the Hospital; (d) carry out their duties (and otherwise behave) in a professional, timely, and competent manner using appropriate skill and care therein; and (e) are fully supervised by appropriate and experienced individuals at all times.

3.3.4 *Training.* Operating Entity shall be responsible for ensuring that all personnel working at the Hospital and Parking Facility, whether as employees of Operating Entity or otherwise, are adequately and appropriately oriented and trained. For such purposes, Operating Entity shall implement and operate applicable training courses for all personnel.

3.4. Service Lines.

3.4.1 *Clinical Services.* Except as provided in Section 3.4.2, Operating Entity shall provide and maintain the inpatient services, outpatient and ambulatory services, hospital-

based services, specialty services, and partnership services set forth on Exhibit B, and such other clinical services reasonably required, at the Hospital (the “**Clinical Services**”). Pursuant to the Development Agreement, the Hospital will open with no fewer than 136 licensed inpatient beds (the “**Minimum Bed Capacity**”). Except as set forth in Section 3.4.2, Operating Entity shall maintain in service at the Hospital the Minimum Bed Capacity during the Term.

3.4.2 *Changes to Service Lines.* Any changes to the Clinical Services, reduction of beds in service below the Minimum Bed Capacity, or closure or discontinuation of inpatient or outpatient operations are subject to all Applicable Laws and regulatory licensing requirements of the District, including, without limitation, D.C. Official Code § 44-401 *et seq.*, D.C. Official Code § 44-501 *et seq.*, and their related regulations. In addition to the foregoing, Operating Entity shall provide at least six (6) months’ prior written notice to the Mayor of the District (or designee(s)) (collectively, the “**Mayor**”) before (a) reducing the number of licensed inpatient beds in service below the Minimum Bed Capacity or (b) discontinuing or materially modifying any of the following services: (i) emergency medicine; (ii) general medicine; (iii) general surgery; (iv) behavioral health; (v) intensive care unit; (vi) radiology; (vii) pathology and/or laboratory; (viii) cardiology; and (ix) nephrology (clauses (a) and (b), including each of the services identified in clause (b), a “**Core Service**” and, collectively, the “**Core Services**”). The written notice to the Mayor provided pursuant to this Section shall be a public record and shall substantiate Operating Entity’s rationale for discontinuing or materially modifying a Core Service and shall include, at a minimum, a description of the factors Operating Entity considered in coming to such determination, including, without limitation, financial, care quality, need and community utilization, and patient safety considerations. Upon receipt of the written notice, the Mayor shall have one hundred twenty (120) days to review and respond to the notice and the rationale presented therein. At his or her election, the Mayor may provide input on the planned action of Operating Entity. In that event, Operating Entity shall: (A) give substantial deference to the input provided by the Mayor and provide a written response to the Mayor acknowledging receipt of the Mayor’s input and including a reasoned explanation as to why Operating Entity agrees or disagrees with each issue raised by the Mayor; and (B) if appropriate, based on Operating Entity’s response to the Mayor, modify the planned action to accommodate the input received from the Mayor; provided, however, that Operating Entity may not completely cease inpatient or outpatient operations of the Hospital (in either the Ambulatory Facility or the Inpatient Hospital, or both) without the prior consent of the Mayor pursuant to Section 5.3.

3.4.3 *Non-High Risk Obstetric Services, Level 1 Newborn Services, and Level 2 NICU.* Non-high risk obstetric services, Level 1 newborn services, and Level 2 neonatal intensive care unit services must be provided at the Hospital unless restricted from providing this service at the Hospital by the District’s Department of Health in accordance with Applicable Law. This requirement shall not preclude Operating Entity from providing high-risk obstetric and newborn services if reasonably determined to be necessary by Operating Entity, and subject to all required regulatory approvals.

3.5. Community Engagement. Operating Entity recognizes that the Hospital will be an integral component of the delivery of health care to residents in Ward 7 and Ward 8 of Washington, D.C., and, to integrate the Hospital into the community health infrastructure already operating in Ward 7 and Ward 8, Operating Entity shall establish partnerships and affiliations with existing, or newly developed, community health centers, federally qualified health centers, and other

community-based health care providers. Through these partnerships and affiliations, Operating Entity shall, and shall cooperate with local organizations that sponsor health care initiatives to, address challenges related to health care access, health and health care equity, health and health care quality, identified community needs, and improvements in the health status of the elderly, poor, and other at-risk populations. Coordination with these community health care providers shall be pursuant to a comprehensive, long-term plan for community and health care provider engagement, which will include initiatives by Operating Entity to reduce barriers for community health care providers, especially primary care providers, to serve their patients as valued participants in Operating Entity's and the Foggy Bottom Facility's health care delivery system. The Parties shall cooperate, immediately after the Effective Date, to develop and implement an initial community and health care provider engagement plan (the "**Community Engagement Plan**") that will include a process for community and health care provider stakeholders to provide input and convey information about how operations of the Hospital will meet resident needs and improve the delivery of health care in Ward 7 and Ward 8 and throughout Washington, D.C. The Parties shall (a) subject to extenuating circumstances beyond their control that preclude the foregoing, finalize the Community Engagement Plan within ninety (90) days of the Effective Date and (b) review and update the Community Engagement Plan on the first (1st) anniversary of the Effective Date and annually thereafter. As part of its community engagement activities, Operating Entity shall provide community education and engagement to promote appropriate, quality, and timely use of primary care services, including, without limitation, preventative, acute, and chronic disease management, and shall emphasize and strengthen the network of community-based primary care providers in Ward 7 and Ward 8. Through community and health care provider partnerships, Operating Entity shall promote the integration of medical and behavioral health services in primary care, medical, and behavioral health outpatient clinics.

3.6. Population Health. Operating Entity shall conduct, either directly or through GW's Milken Institute School of Public Health and Health Services, community-based outcomes and population research that includes the patients that are served by the Hospital, and particularly patients with the most prevalent chronic and/or complex health conditions, as well as population health needs identified in the District's or Operating Entity's Community Health Needs Assessments.

3.7. Uncompensated Care and Community Benefits. Notwithstanding D.C. Official Code §§ 44-402, 44-405, and 44-406 and D.C. Mun. Regs. tit. 22-B § 4400.2, Operating Entity shall ensure that, on an annual basis, at least three percent (3%) of the Hospital's total operating expenses, as set forth in the Hospital's annual audited financial statements, or its equivalent, minus the amounts of reimbursement, if any, under Titles XVIII and XIX of the Social Security Act, shall be used to provide Uncompensated Care, Charity Care, and Community Benefits. Qualifying activities designated under the Community Engagement Plan may be counted toward Community Benefits. Failure to meet the standards set forth in this Section 3.7 shall not independently constitute a Material Breach.

3.8. Teaching and Research. The Hospital shall be a teaching site for The George Washington University School of Medicine and Health Sciences ("**GW SOM**") and shall provide educational opportunities for medical students, students in allied health professions degree programs, medical residents, and fellows of GW SOM and any other GW health sciences program, including through clerkship, residency, fellowship, and other practicum placements. Operating

Entity shall enter into such arrangements and agreements with GW SOM as are reasonable and necessary to facilitate the teaching program at the Hospital. Operating Entity shall use good faith efforts, through discussions with GW SOM and other educational institutions, as applicable, to integrate any residency programs offered at the Hospital with the existing behavioral health programs offered at St. Elizabeths Hospital, and to pursue other partnerships or affiliations that are consistent with Operating Entity's mission as a key component of an academic medical center.

3.9. Branding. At all times, the Hospital shall be branded in a consistent manner with the Foggy Bottom Hospital and the Foggy Bottom Facility, or any successors thereto, such that, for example, if the Foggy Bottom Hospital is known as "George Washington University Hospital" or "GW Health Hospital" then the Hospital shall be known, respectively, as "George Washington University Hospital at St. Elizabeths" or "GW Health Hospital at St. Elizabeths," or such other name that includes "George Washington University" or "GW Health," as the case may be, in the title name and not as a modifier indicating its affiliation with the Foggy Bottom Hospital and the Foggy Bottom Facility, or any successors thereto. Operating Entity shall use best efforts to obtain and maintain any and all rights necessary to name and brand the Hospital in a manner consistent with the Foggy Bottom Hospital, including obtaining and maintaining rights to the name and brand "George Washington University" or "GW Health" and shall promptly notify the District in writing if Operating Entity is unable to obtain or maintain these branding and naming rights.

3.10. Compliance with Law. At all times during the Term, Operating Entity shall ensure that the Hospital and Parking Facility are operated in full compliance with all applicable laws, including, without limitation, all Health Care Laws relating to the Hospital and Hospital Licenses ("**Applicable Law**").

3.11. Licenses. During the Term, Operating Entity shall not allow any of the Hospital Licenses or Parking Licenses to become invalid, restricted, suspended, or otherwise adversely affected by the acts or omissions of Operating Entity or any of its directors, officers, employees, agents, or representatives.

3.12. Labor.

3.12.1 Operating Entity recognizes and agrees that its employees at the Hospital and Parking Facility shall have the right, in compliance with applicable federal and District law, to self-organize; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

3.12.2 Operating Entity agrees that it will not interfere with, restrain, or coerce employees in the exercise of the above-described rights, and further recognizes the rights of employees to form or administer a bargaining unit of their own choosing, free from any unlawful discrimination or retaliation in regard to any term or condition of their employment, and from any unlawful refusal to bargain with a legally authorized representative.

3.12.3 Operating Entity agrees that, in the event a duly authorized representative is legally and properly elected by its employees to bargain collectively with Operating Entity, it

shall do so in good faith consistent, and in accordance with, any applicable legal obligations arising under the National Labor Relations Act (“**NLRA**”).

3.12.4 In the event of an alleged violation of NLRA, the Parties’ recourse for enforcement shall be as set out within the administrative framework of the NLRA and any avenues for judicial review before the federal Courts of Appeal and/or the U.S. Supreme Court. Upon the exhaustion of that process, the District may exercise its enforcement rights under this Agreement or otherwise as permitted by law. If the NLRA is amended or modified at the federal level in any way that changes the terms of this Section 3.12, this Section 3.12 shall be deemed to have been modified to conform to such statutory amendments or changes.

ARTICLE 4

SERVICE STANDARDS AND QUALITY STANDARDS

4.1. Services and Quality Programs. Operating Entity shall ensure that (a) the Hospital participates in the same Quality Programs as the Foggy Bottom Facility, as appropriate to service line complements, and (b) the Hospital achieves or demonstrates progress towards achievement of performance at a level of “national benchmark or better” on national service standards (the “**Service Standards**”) and national quality standards (the “**Quality Standards**”). For the avoidance of doubt, the Service Standards and the Quality Standards apply to the inpatient and outpatient and ambulatory services provided at the Hospital (whether through the Ambulatory Facility, Inpatient Hospital, or both). To demonstrate achievement of the Service Standards and the Quality Standards, Operating Entity shall, in addition to such other actions as are reasonably necessary to demonstrate achievement of or progress towards Hospital performance at a level of “national benchmark or better” on the Service Standards and Quality Standards, ensure that the Hospital:

4.1.1 Obtains and maintains eligibility for participation in Medicare, Medicaid, and other payment programs;

4.1.2 Operates in compliance with applicable municipal, state, and federal laws which require reporting of quality and safety performance(s);

4.1.3 Obtains and maintains accreditation by the applicable accrediting bodies, including The Joint Commission (“**TJC**”); and

4.1.4 Seeks specialty registries and/or accreditation from accrediting bodies such as the American College of Surgeons.

4.2. Community Representation in Quality Programs. Operating Entity shall establish a Patient and Family Advisory Council (“**PFAC**”) that includes community representatives from Ward 7 and Ward 8. Operating Entity shall appoint at least one community representative from the PFAC to the Hospital Quality Council or equivalent quality oversight committee reporting to the Board.

4.3. Quality Reporting. Operating Entity shall participate in all routine national quality reporting so as to ensure public availability of the Hospital’s quality performance data. In addition

to mandatory reporting requirements associated with the federal Centers for Medicare and Medicaid Services and TJC accreditation, Operating Entity shall complete annually the Leapfrog Hospital Survey for the Inpatient Hospital, inclusive of all available data, and, annually, complete on behalf of the Ambulatory Facility any quality surveys that are completed and submitted on behalf of the ambulatory and outpatient facilities of the Foggy Bottom Facility, as appropriate to service line complements of the Ambulatory Facility. Prior to complete routine national reporting data becoming available, and for no less than the first two (2) years of the Inpatient Hospital's operations, Operating Entity shall report on quality as follows: submit semi-annually to the District a detailed update on progress towards full TJC accreditation; and submit annually: a summary of the Hospital's annual quality improvement plan, a summary of the Hospital's annual quality improvement report, and a comparative summary of quality improvement plans and report findings for the Hospital and Foggy Bottom Facility.

4.4. Identification of Quality Standards Gaps. If, as applicable, the Ambulatory Facility or the Inpatient Hospital does not achieve national benchmarks for Quality Standards during the first or second full years of its operation, then, at the end of each such year of operation, Operating Entity shall provide to the Board a remediation plan reflecting its plan to achieve such benchmarks during the following one (1)-year period. If, as applicable, the Ambulatory Facility or the Inpatient Hospital has not achieved national benchmarks for Quality Standards or for Service Standards by completion of its third full year of operation, then, beginning at the start of the fourth year, the District may, in addition to any other regulatory and licensing authority the District has, restrict use of any District-funded annual operating subsidy, including any funding from the Hospital Fund and any patient care reimbursement rates, to activities directly related to improving performance on deficient Quality Standards and/or Service Standards.

ARTICLE 5

GOVERNANCE

5.1. Governing Board. The Hospital shall be governed by a governing board (the "**Board**"), a majority of whose members shall be appointees of Operating Entity, including, without limitation, officers and employees of UHS, DHP or Operating Entity. The District shall be represented on the Board and have the right to appoint three (3) members or twenty percent (20%) of the Board's total composition (or, if twenty percent (20%) of the Board's total composition does not equal a whole number, the number of members that is equal to twenty percent (20%) of the Board's total composition rounded up to the nearest whole number; provided that the District's representatives shall not have more than 20% of the votes of the Board), whichever is greater.

5.2. Joint Meetings. From and after the Ambulatory Facility Opening Date or the date on which the Board is formed (whichever is earlier), and throughout the Term, Operating Entity shall convene meetings, no less than annually, with the Mayor, the Chair of the Board, the Chief Executive Officer of the Hospital and the employee of UHS or its Affiliate who serves as the Chief Executive Officer of GWUH (or designee(s)) (collectively, the "**UHS Executive**") to discuss the performance of the Parties' obligations under the Implementing Agreements, including, without limitation, quality and safety outcomes; operation of the services lines; proposed material modifications to the Hospital operations that would have significant financial or quality of care implications for Washington, D.C., residents; workforce development; community engagement

and population health; Uncompensated Care, Charity Care, and Community Benefits; financial performance of the Hospital; and Operating Entity's Capital Expenditures and investments in new health care infrastructure and services in Ward 7 and Ward 8 pursuant to Section 6.2 and ARTICLE 7. Such meeting, occurring on at least an annual basis, is referred to herein as a "**Joint Meeting**." On an annual basis, not fewer than sixty (60) days after the end of Operating Entity's fiscal year, Operating Entity shall provide a report detailing Operating Entity's compliance with all of Operating Entity's obligations under this Agreement in substantially the form set forth in Exhibit C (the "**Annual Report**"), as well as financial performance information on the Hospital to the Mayor in such form as the Mayor shall request. Operating Entity shall convene each Joint Meeting no fewer than forty-five (45) days after delivery of the Annual Report to the District. Operating Entity shall provide any financial, administrative, operational or other information concerning the matters set forth herein that the District may reasonably request.

5.3. Reserved Rights of the District.

5.3.1 Mayor's Consent. Subject to Section 5.3.2, Operating Entity shall not take any action resulting in, or allow for the occurrence of any of the following events, without the Mayor's prior written consent:

- (a) Any Transfer, other than a Permitted Transfer; or
- (b) Ceasing all inpatient or outpatient operations of the Hospital.

5.3.2 Failure to Obtain Mayor's Consent. Prior to the occurrence of any of the events in Section 5.3.1, Operating Entity shall notify the District as early as reasonably practicable but, in any event, at least ninety (90) days prior to the effective date of the event. If such event relates to a Transfer, other than a Permitted Transfer, such notice shall include such documentation pertaining to such event as set forth in Section 10.3.2 of the Lease Agreement. If such event relates to Operating Entity's intent to cease all inpatient or outpatient services at the Hospital, such notice shall include information or documentation supporting the proposed event including, as applicable, (i) financial necessity, (ii) lack of community need for services proposed to be terminated, (iii) availability of equivalent services within the community, (iv) unavailability of qualified health care providers, (v) change in community demographics, (vi) unavailability of requisite transportation to service the Hospital, and (vii) such other information as Operating Entity determines appropriate to support the proposed action. If the event is either (a) a Third Party Change of Control of UHS (as defined in the Lease Agreement), or (b) the ceasing by Operating Entity of all inpatient or outpatient operations of the Hospital, then within ninety (90) days after District's receipt of the requisite notice from Operating Entity, inclusive of such all required documentation and information, the District may, in its sole discretion, in addition to any other remedies it may have herein or under law, elect to terminate this Agreement as applicable under Section 9.2 and secure a new operator for the Hospital. The failure of the District to elect to terminate this Agreement within such ninety (90)-day period (provided that the District has received all required documentation and information pertaining to such proposed event) shall render the District's termination right under this Section 5.3.2 null and void. If the District so terminates, Operating Entity shall (x) if termination occurs during Years 1 through 3 of this Agreement, be responsible for the payment to the District of the amount of thirty-three million dollars (\$33,000,000), as well as reimbursing the District for the costs of the new operator for its

first two (2) years of service, up to a maximum annual amount of seven million dollars (\$7,000,000); (y) if termination occurs during Years 4 or 5 of this Agreement, be responsible for the payment to the District of the amount of twenty-seven million dollars (\$27,000,000), as well as reimbursing the District for the costs of the new operator for its first two (2) years of service, up to a maximum annual amount of six million dollars (\$6,000,000); (z) if termination occurs during Year 6 of this Agreement, be responsible for the payment to the District of the amount of twenty-four million dollars (\$24,000,000), as well as reimbursing the District for the costs of the new operator for its first year of service, up to a maximum annual amount of five million dollars (\$5,000,000); (xx) if termination occurs during Years 7 or 8 of this Agreement, be responsible for the payment to the District of the amount of twenty-two million dollars (\$22,000,000), as well as reimbursing the District for the costs of the new operator for its first year of service, up to a maximum annual amount of five million dollars (\$5,000,000); or (yy) if termination occurs during Years 9 or 10 of this Agreement, be responsible for the payment to the District of the amount of twenty million dollars (\$20,000,000), as well as reimbursing the District for the costs of the new operator for its first year of service, up to a maximum annual amount of four million dollars (\$4,000,000); (zz) cooperate with and assist the District, at Operating Entity's sole cost and expense, in securing a new operator for the Hospital and transitioning the Services, Hospital assets, Hospital Licenses, Parking Facility assets, Parking Facility Licenses, and employees of the Hospital and Parking Facility to the new operator consistent with the Handover Process; and (xxx) release any employees, contractors, agents, vendors, or service providers of the Hospital or Parking Facility from any non-competes or restrictive covenants applicable to them under the Implementing Agreements or any other agreement or arrangement pertaining to the Hospital or Parking Facility, such that they may continue to perform services for or at the Hospital or Parking Facility. The Parties agree that the foregoing payment amounts are fair and reasonable, do not constitute a penalty or forfeiture, and have been established as of the Effective Date as it would be extremely difficult to accurately determine the amount of damage suffered by the District as a result of Operating Entity's action in contravention of Section 5.3.1.

ARTICLE 6

FINANCIAL COMMITMENTS

6.1. The District's Commitments.

6.1.1 Hospital Fund. The District shall deposit into a special purpose fund ("**Hospital Fund**") the amount of five million dollars (\$5,000,000.00) per year ("**Annual Deposit**") during each of the first five (5) fiscal years commencing with the first fiscal year that begins after the Commencement Date for the first component under the Lease Agreement. The Annual Deposits shall accumulate in the Hospital Fund. Any funds remaining in the Hospital Fund after ten (10) years and six (6) months after the Hospital Opening Date shall no longer be available for payment to Operating Entity.

(a) On or before March 1st of each year during the initial ten (10) years of the Term, Operating Entity may provide a notice ("**Deficit Notice**") to the District that identifies whether during Operating Entity's preceding fiscal year, the Hospital (including operations of the Parking Facility) had a Deficit; provided that no Deficit Notice may be provided to the District until after the Hospital's first full fiscal year. For purposes of this Section, a "**Deficit**" is defined

as a negative EBITDA margin and EBITDA shall be calculated consistent with the EBITDA calculation in Exhibit D to the Lease Agreement. The Deficit Notice shall provide financial statements and other supporting documentation for the EBITDA margin to demonstrate how the Deficit was calculated.

(b) Within ninety (90) days after receipt of a Deficit Notice, the District shall respond to Operating Entity's Deficit Notice and identify whether (i) the District acknowledges the Deficit set forth in the Deficit Notice, or (ii) the District disputes Operating Entity's calculation or requires additional information to validate the Deficit set forth in the Deficit Notice.

(c) To the extent (i) Operating Entity timely provides a Deficit Notice, (ii) the District acknowledges the Deficit, and (iii) there are funds available in the Hospital Fund, the District shall pay to Operating Entity, within sixty (60) days of the District's acknowledgement under (ii), an amount equal to the lesser of (x) the amount of the Deficit, or (y) the amount in the Hospital Fund. To the extent there are not sufficient funds in the Hospital Fund for the District to pay Operating Entity the Deficit, the District shall have no obligation to pay Operating Entity any amount above the amount existing in the Hospital Fund. Deficits may not carry-over from year-to-year.

6.1.2 Enhanced Medicaid Rates. If, as of the Ambulatory Facility Opening Date and as of each December 1 thereafter during the Term (each, a "**Measurement Date**"), at least fifty-five percent (55%) of the residents of Ward 8 are enrolled in DC Medicaid (including both Medicaid fee-for-service and Medicaid Managed Care Organization ("**MCO**") beneficiaries and measured by the total number of DC Medicaid enrollees in Ward 8 over the preceding twelve (12)-month period, divided by the total number of residents of Ward 8 according to the most recent census count of the District of Columbia), then, during the calendar year beginning on the January 1 following the applicable Measurement Date (provided that this Agreement remains in effect):

(a) The District shall require that each Medicaid MCO contracted with the District to provide coverage to Medicaid-eligible individuals in the District (each, a "**Medicaid MCO**," collectively, the "**Medicaid MCOs**"), as a condition of being a Medicaid MCO, pay the Hospital (i) for inpatient and outpatient services furnished during the calendar year in which the Hospital opens at a rate equal to at least one hundred forty-eight percent (148%) of the 2019 Medicaid fee-for-service rates (the "**Enhanced MCO Rate**"), and (ii) for inpatient and outpatient services furnished during any subsequent qualifying calendar year at a rate equal to at least the Enhanced MCO Rate as adjusted by the inflationary adjustments under Section 6.1.2(c). Notwithstanding the foregoing, the Parties recognize that the Enhanced MCO Rate, if applicable pursuant to Section 6.1.2(c) will commence as to outpatient services as of the Ambulatory Facility Opening Date and will commence as to inpatient services as of the Hospital Opening Date.

(b) If fewer than ninety-five percent (95%) of all enrollees in DC Medicaid are enrolled in Medicaid MCOs as of the applicable Measurement Date, then the Department of Health Care Finance (inclusive of any successor agency, "**DHCF**") will establish Medicaid fee-for-service reimbursement rates for the Hospital (i) for inpatient and outpatient services furnished from the date of opening and during the immediately succeeding calendar year, as adjusted for the annual inflationary adjustment under Section 6.1.2(c), at a Medicaid fee-for-

service base rate equal to one hundred forty-eight percent (148%) of the 2019 Medicaid fee-for-service inpatient base rate (the “**Enhanced Medicaid Rate**”) and (ii) for inpatient and outpatient services furnished during any subsequent qualifying calendar year at a rate equal to at least the Enhanced Medicaid Rate as adjusted by the inflationary adjustments under Section 6.1.2(c). When the portion of Medicaid MCO enrollees equals ninety-five percent (95%) or more of all DC Medicaid enrollees, then the Enhanced Medicaid Rate shall no longer apply, and the fee-for-service inpatient and outpatient base rates paid to the Hospital shall be established by DHCF through its standard reimbursement methodology. Notwithstanding the foregoing, the Parties recognize that the Enhanced Medicaid Rate, if applicable pursuant to this section, will commence as to outpatient services as of the Ambulatory Facility Opening Date and will commence as to inpatient services as of the Hospital Opening Date.

(c) Prior to the Ambulatory Facility Opening Date, the Hospital and the District, acting through DHCF, shall agree on a formula for annual inflationary adjustments to be made to the Enhanced MCO Rate and the Enhanced Medicaid Rate during the Term (the “**Adjustment Formula**”). If the Parties are unable to agree on the Adjustment Formula prior to the Ambulatory Facility Opening Date, then the Adjustment Formula shall be based on changes to the Consumer Price Index (“**CPI**”) for Medical Care over the most recent twelve (12)-month period for which data are available as of the applicable Measurement Date. Notwithstanding anything herein to the contrary, (i) five (5) years after the first year in which the Enhanced Medicaid Rate or the Enhanced MCO Rate went into effect (the “**Medicaid Rate Commencement Date**”), and after each five (5)-year period thereafter, provided that either the Enhanced Medicaid Rate or the Enhanced MCO Rate is still in effect, the Parties shall meet and review the formula and discuss any potential amendments to the Agreement based on any change in the District’s financial position, changes to the health care landscape, or changes to the Hospital’s financial need for the enhanced rates based on changes to market conditions or the then-current financial condition of the Hospital; and (ii) the Enhanced Medicaid Rate and the Enhanced MCO Rate shall expire and be of no further force and effect upon the earlier of (x) Operating Entity’s (*i.e.*, Tenant’s) exercise of the Purchase Option or the Modified Lease Option pursuant to the Lease Agreement, or (y) expiration of the Lease Agreement.

(d) If, during the term of this Agreement, the Medicaid program is terminated, suspended, or otherwise eliminated (a “**Material Medicaid Change**”), then, subject to applicable law, the Mayor of the District of Columbia, or other appropriate official, shall take every action within her/his authority to provide that the reimbursement rate to the Hospital for inpatient and outpatient services provided to individuals who were covered Medicaid (including Medicaid MCO) beneficiaries in the year immediately preceding termination, suspension, or elimination is no less than the rate paid for those services under this Agreement during the immediately preceding year, subject to applicable annual inflationary adjustments (the “**Enhanced Payment Rate**”). If, notwithstanding the action of the Mayor of the District of Columbia, or other appropriate official, pursuant to the foregoing, the District is unable ensure the Hospital is paid, and to pay the Hospital, the Enhanced Payment Rate, Operating Entity shall have the right to terminate this Agreement under Section 9.2.1 and, notwithstanding anything herein or in the Lease Agreement to the contrary, the Handover Process shall conclude and this Agreement shall terminate immediately prior to the date the Material Medicaid Change takes effect.

6.2. Operating Entity's Commitments. Operating Entity shall make the following financial commitments to the Hospital and Parking Facility:

6.2.1 Except as set forth in Section 6.1.1, Operating Entity shall be fully responsible for all operating costs of the Hospital and Parking Facility.

6.2.2 Operating Entity shall be responsible for all capital equipment maintenance and replacement and physical plant expenditures at the Hospital and Parking Facility from and after the Ambulatory Facility Opening Date (except as otherwise provided in the Development Agreement, including with respect to construction of the Inpatient Hospital and Parking Facility, which shall be completed as set forth in the Development Agreement) (collectively, the "**Capital Expenditures**"). The Capital Expenditures shall include any and all capital expenditures at the Hospital and Parking Facility necessary to maintain the Hospital and Parking Facility at a substantially equivalent level of appearance, physical competence and equipment outfit as the Foggy Bottom Facility and as is otherwise necessary to maintain the Hospital and Parking Facility in accordance with the Implementing Agreements. For the avoidance of doubt, the capital and equipment replacement schedule and process, and quality of replacement capital and equipment, at the Hospital and Parking Facility shall be equivalent to the schedule and process, and quality of replacement equipment and capital at the Foggy Bottom Facility, recognizing the case-mix adjusted utilization requirements of each facility with respect to capital and equipment.

ARTICLE 7

HEALTH CARE INFRASTRUCTURE INVESTMENTS

7.1. Health Care Infrastructure Investments. Apart from its other obligations under this Agreement, Operating Entity shall make additional investments, at a value of at least seventy-five million dollars (\$75,000,000) over ten (10) years (the "**Infrastructure Investment Amount**") in Health Care Infrastructure in Ward 7 and Ward 8. "**Health Care Infrastructure**" shall mean the investment of the Infrastructure Investment Amount as set forth in Sections 7.3 and Section 7.4 and according to the schedule set forth in Exhibit D.

7.2. Investment Timeline. The Health Care Infrastructure Investments in Ward 7 and Ward 8 may begin on the Effective Date and shall begin no later than the earliest of: (a) receipt of the certificate of need for a new medical mall, urgent care, or ambulatory care facility in Ward 7; (b) receipt of the certificate of need for a new medical mall, urgent care, or ambulatory care facility in Ward 8; or (c) receipt of the certificate of need for the Hospital. The Infrastructure Investment Amount shall be completely expended on Health Care Infrastructure investments in Ward 7 and Ward 8 within ten (10) years after the Effective Date. No investments in health care infrastructure made prior to the Effective Date shall count toward the Infrastructure Investment Amount. Operating Entity's failure to expend the full Infrastructure Investment Amount, which shall be expended in accordance with the terms hereof, shall constitute a Material Breach of this Agreement.

7.3. Ward 7 and Ward 8 Investments. Operating Entity shall establish, own (or lease), operate, manage, and maintain (a) a medical mall, urgent care or ambulatory care facility in Ward 7, that shall provide both urgent care and diagnostic services, including diagnostic imaging (the

“**Ward 7 Facility**”) and (b) a medical mall, urgent care, or ambulatory care facility in Ward 8 (in addition to the Ambulatory Facility), that shall provide both urgent care and diagnostic services, including diagnostic imaging (the “**Ward 8 Facility**”). In addition, Operating Entity shall establish an electronic health records system and associated information technology infrastructure for the Hospital (the “**EHR/IT Investments**”) and Development Entity shall provide program management services for the construction of the Project as defined in the Development Agreement (the “**PM Investments**”). (The Ward 7 Facility, Ward 8 Facility, and EHR/IT Investments and PM Investments are collectively referred to in this Article as the “**Ward 7 and 8 Investments.**”) For clarity, the Ward 8 Facility is distinct from the Ambulatory Facility, and the costs of construction of the Ambulatory Facility are not the responsibility of Operating Entity and are not counted against the Infrastructure Investment Amount. In addition, not more than nine million dollars (\$9,000,000) of the PM Investments shall count towards Operating Entity’s expenditure of the Infrastructure Investment Amount.

7.3.1 The Health Care Infrastructure, including the Ward 7 and 8 Investments, shall be established or leased or constructed in accordance with D.C. Official Code § 44-401 *et seq.* and D.C. Official Code § 44-501 *et seq.*, and their related regulations, and must be physical, brick-and-mortar locations with the primary purpose of allowing residents to receive in-person services on site during regularly-scheduled hours of operation. In addition to the requirements of this Section 7.3, both the Ward 7 Facility and the Ward 8 Facility must operate, at a minimum, in a manner that allows for the delivery of medical care to walk-in patients for minor illnesses and injuries on an outpatient basis, and the primary method of service delivery may not be through telehealth or eHealth solutions. Unlike hospital emergency departments, it shall not be required that the Ward 7 Facility or Ward 8 Facility operate 24 hours per day. The Ward 7 Facility and the Ward 8 Facility shall, at all times, be enrolled in Medicare and DC Medicaid and shall provide Uncompensated Care, Charity Care, and Community Benefits consistent with Section 3.7. Operating Entity shall establish the Ward 7 Facility and the Ward 8 Facility such that one facility shall be completed and operating by October 31, 2021 and the other facility shall be completed and operating by April 30, 2022, subject to receipt of necessary regulatory approvals (*e.g.*, if applicable, receipt of a non-appealable Certificate of Need). Failure of Operating Entity to complete and operate either facility by the respective foregoing dates shall constitute a Material Breach under Section 9.2.1 of this Agreement, unless Operating Entity has made and continues to make good faith efforts to establish the Ward 7 Facility and the Ward 8 Facility pursuant to the terms set forth herein, including with respect to identification and location of facilities.

7.4. Additional Ward 7 and 8 Investments. Operating Entity shall expend the remainder of the Infrastructure Investment Amount on other health care infrastructure projects in Ward 7 and Ward 8, such as, diagnostic imaging facilities, technology-based virtual delivery services, medical office buildings, electronic health record systems, capital expenditures associated with maintaining or enhancing the medical mall/urgent care and ambulatory facilities or the Hospital, and other health care facilities in Ward 7 and Ward 8.

7.5. Additional Investments. After the expenditure of the Infrastructure Investment Amount and the construction and establishment of all health care infrastructure investments made with the Infrastructure Investment Amount, Operating Entity shall ensure that the infrastructure investments made to maintain a level of excellence, consistent maintenance, and ongoing modernization of the facilities in Ward 7 and Ward 8 are reasonably equivalent to infrastructure

investments made to maintain a level of excellence, consistent maintenance, and ongoing modernization of Operating Entity's or DHP's facilities in other wards within the District, such that the health care services made available by Operating Entity for residents in Ward 7 and Ward 8 are convenient, of consistently high quality, and are matched to community need.

7.6. In-Kind Investments. In connection with the construction and operation of the Hospital and the Parking Facility as set forth herein and in the Development Agreement and as a reflection of Operating Entity's commitment to the District in furtherance of the Parties' mutual goals set forth in the Collaboration Agreement, the Parties acknowledge the in-kind services provided by and to be provided by Operating Entity and its Affiliates in the design and construction of the Hospital, including without limitation inclusion of the Hospital in UHS' group purchasing organization; significant design and construction savings from UHS' expertise; consulting and implementation savings from UHS' expertise in development; excluding the costs of the EHR Equipment, execution and integration of a comprehensive Cerner electronic medical platform across both the inpatient and outpatient continuum; and corporate support, expertise, and resources in critical areas of hospital management, operations, and oversight, including assistance on (a) clinical integration among the Inpatient Hospital, the Foggy Bottom Facility, MFA, the Ambulatory Facility, the Ward 7 Facility, and the Ward 8 Facility, (b) patient experience, (c) revenue cycle, (d) quality performance and management, (e) physician practice management, (f) managed care contracting, (g) human resources and recruiting, (h) risk management and insurance, (i) supplies and services purchasing and contracting, (j) facilities engineering and management, and (k) real estate oversight and management.

ARTICLE 8

COMMUNITY INVESTMENTS

8.1. Community Commitments. In connection with the establishment and operation of the Hospital, Operating Entity has made certain commitments to the residents of Washington, D.C., in particular the residents of Ward 7 and Ward 8. Certain of these commitments are set forth in Sections 3.5, 3.6, 3.7, and 3.8. In addition, Operating Entity shall make the community investments set forth in this ARTICLE 8.

8.2. Hiring of District Residents. Within one hundred eighty (180) days of the Effective Date, Operating Entity will enter into a First Source Agreement with the District that shall govern the obligations of Operating Entity regarding job creation and employment as a result of the operation of the Hospital and Parking Facility, pursuant to the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 et seq.) (the "**First Source Act**"). Operating Entity shall submit such reports as the District from time to time may require regarding the hiring of Washington, D.C., residents.

8.3. Utilization of District Businesses. Within one hundred eighty (180) days of the Effective Date, Operating Entity will enter into a CBE Utilization Agreement with the District that shall govern certain obligations of Operating Entity regarding the utilization of certified business enterprises ("**CBEs**") in the operation of the Hospital and Parking Facility. Throughout the operation of the Hospital and Parking Facility, Operating Entity shall submit to the District copies of any reports required to be submitted under the CBE Utilization Agreement. Operating Entity

shall also submit to the District such other reports as the District may from time-to-time require regarding the value of contracts awarded to CBEs (generally and by type of certification) in connection with the operation of the Hospital and Parking Facility.

8.4. Workforce Development.

8.4.1 Recognizing that the Hospital has an opportunity to improve the health of residents in Ward 7 and Ward 8 by providing access to not only quality health care services but also to long-term employment opportunities, Operating Entity shall prepare qualified District residents for employment at the Hospital and in health professions fields. Operating Entity shall establish formal partnerships with the District's workforce, health, economic development, and public and higher education agencies, as well as community-based organizations serving Ward 7 and Ward 8, to prepare qualified District residents for employment at the Hospital and in health profession fields and seek to hire qualified residents into the Operating Entity system. As provided in Section 8.2, Operating Entity shall enter into a First Source Agreement with the District. The First Source Agreement shall include a hiring plan for the operations of the Hospital and Parking Facility. After the plan is completed, the Department of Employment Services (inclusive of any successor agency, "**DOES**") will connect Operating Entity with the DOES Office of Talent and Client Services to facilitate Operating Entity's hiring and training of District residents.

8.4.2 Operating Entity shall establish and/or partner with another entity or entities to implement learning, training, hiring, and mentoring programs for District residents interested in pursuing health care careers. These programs shall support the development of a human capital pipeline for current and future employment opportunities. Partnerships may include programs with: public high schools in Ward 7 or Ward 8; the University of the District of Columbia; and/or DOES, including apprenticeships, on-the-job training programs and the Marion Barry Summer Youth Employment Program. These partnerships shall seek to establish and/or support existing or new programs that prepare District residents for careers in, and continued education and training in, the health care industry, including preparation and training for jobs and careers at the Hospital, Operating Entity's ambulatory and urgent care facilities, and other Operating Entity-related facilities.

8.4.3 Operating Entity shall meet with and otherwise disseminate information to Ward 7 and Ward 8 residents regarding forecasted hiring for the Hospital (including the numbers and types of positions) and the anticipated education, background, and experience requirements for each type of position; and, once Operating Entity initiates outreach or advertisements associated with the hiring process, hold career/hiring fairs in Ward 7 and Ward 8, including at the United Medical Center ("**UMC**").

8.4.4 At least two (2) years before the Hospital Opening Date, the District shall, in coordination with Operating Entity, establish training program(s) such that then-current UMC employees who are interested in pursuing a career at the Hospital can receive training they may need to meet the quality and hiring standards of the Hospital. The training shall be from an accredited provider(s) selected by the District and shall align with any quality and hiring standards established by the Hospital.

8.4.5 Operating Entity shall provide preference in hiring for employment at the Hospital first to qualified employees of UMC who meet the minimum standards for employment established by the Hospital, unless there exists a reasonable basis for Operating Entity to deny employment to a prospective employee based on that individual's qualifications or lack thereof.

ARTICLE 9

TERM AND TERMINATION

9.1. Term. This Agreement shall be in effect until the termination or expiration of the Lease Agreement under the terms thereof (the "Term"), unless earlier terminated in accordance with the provisions below.

9.2. Termination. This Agreement may be terminated under any one of the following circumstances, or as otherwise set forth herein:

9.2.1 By either Party, if there has been a Material Breach by the other Party of any covenant or agreement contained in this Agreement that is not remedied, or cannot be remedied by the breaching Party to the reasonable satisfaction of the non-breaching Party, within ninety (90) days, or, if the nature of the breach so requires as is reasonably agreed by the Parties, one hundred twenty (120) days, after receipt of notice thereof; provided that the termination shall be effective at the conclusion of the Handover Process if the breach is not sufficiently remedied in the sole reasonable discretion of the non-breaching Party at the end of the applicable ninety (90) or one-hundred twenty (120)-day notice period; provided, further, that, in the event of any breach by the District of Section 6.1.1 or Section 6.1.2, the breach shall be deemed remedied if the obligation is performed or satisfied by the end of the cure period described hereunder and, if not remedied, Operating Entity shall, as the sole remedy in addition to termination of this Agreement, be entitled to specific performance, including recoupment of all past due amounts.

9.2.2 By the District, if, either (a) the Ambulatory Facility Opening Date does not occur on or before the applicable Substantial Completion Date for Substantial Completion of the Ambulatory Facility as set forth in the Development Agreement, or (b) the Hospital Opening Date does not occur on or before the Final Completion Date, in each case, subject to any applicable reasonable extensions of the opening date as set forth in the Development Agreement; provided that termination shall be effective as of such date.

9.2.3 By the District, upon restriction, limitation, suspension, termination, revocation or exclusion of Operating Entity's right to participate in Medicare, Medicaid, or other federal or state governmental health care programs; provided that the termination shall be effective (a) after all administrative and judicial appeals have been exhausted and (b) at the conclusion of the Handover Process.

9.2.4 By the District, upon material restriction or limitation, suspension, termination, revocation or exclusion of the Hospital's license or accreditation with any national or state accrediting body; provided that the termination shall be effective (a) after all administrative and judicial appeals have been exhausted and (b) at the conclusion of the Handover Process.

9.2.5 By the District, if Operating Entity voluntarily commences any proceeding or files any petition seeking liquidation, reorganization or other relief under any federal or state bankruptcy, insolvency, receivership or similar law now or hereafter in effect; provided that the termination shall be effective at the conclusion of the Handover Process.

9.2.6 By the District, in accord with Section 5.3.2, in the event of any action listed in Section 5.3.1, notwithstanding the District's disapproval; provided that the termination shall be effective at the conclusion of the Handover Process.

9.2.7 [Intentionally omitted.]

9.2.8 Immediately upon termination of the Lease Agreement if the Lease Agreement is terminated as a result of an Event of Default (as defined in the Lease Agreement) or in the event of an early termination of the Lease Agreement under Section 3.2 of the Lease Agreement (inclusive of its subsections), in either case, at the conclusion of the Handover Process, if applicable.

9.3. Effect of Termination.

9.3.1 Notwithstanding any other provisions of this Agreement, except as set forth in this Section 9.3 and so long as all payments by the District required under this Agreement continue to be made, in the event of termination for any reason, Operating Entity shall continue to perform the Services, plus any other transition assistance services as reasonably requested by the District that are consistent with the nature of the Services furnished by Operating Entity during the Term, to transition the provision of the Services to the District or a new operator chosen by the District, in its sole discretion during the Handover Process.

9.3.2 In the event of termination by the District under Sections 5.3.2, 9.2.3, 9.2.4, 9.2.5, 9.2.6, or 9.2.8, the terms of Section 5.3.2 shall apply.

9.4. Effect of Purchase Option or Modified Lease Option Exercise. In the event that Operating Entity (*i.e.*, Tenant) exercises the Purchase Option or Modified Lease Option pursuant to the Lease Agreement, this Agreement shall no longer be effective; provided, however, that Operating Entity shall continue to operate the Hospital in compliance with all applicable laws, regulations, and certification and accreditation standards and Section 3.9 [Branding] shall remain in effect until termination or expiration of the Lease Agreement.

9.5. Remedies for Foggy Bottom Facility. In the event (a) of restriction, limitation, suspension, termination, revocation, or exclusion of the Foggy Bottom Facility's right to participate in Medicare, Medicaid or other federal or state governmental health care programs, or (b) that the operator of the Foggy Bottom Facility voluntarily commences any proceeding or files any petition seeking liquidation, reorganization, or other relief under any state bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, Operating Entity will use its best efforts to ensure that patients of the Hospital continue to have ready access to (x) a Level 1 trauma center and other tertiary and quaternary care in D.C., and (y) all care necessary to meet the acuity of their presentation.

ARTICLE 10

DISPUTE RESOLUTION

In the event of any dispute arising under, or related to this Agreement (each, a “**Dispute**”), the Parties will endeavor in good faith to resolve the Dispute through informal discussions. If initial informal discussions are unsuccessful at resolving the Dispute, then such Dispute may be submitted to (a) the Mayor and (b) the UHS Executive, who shall meet and confer and use their best efforts to resolve such Dispute within thirty (30) days after such submission. If the Mayor and the UHS Executive are unable to resolve such Dispute within thirty (30) days after such submission, the Parties may try in good faith to settle the Dispute by non-binding mediation. In such event, the Parties will choose a mutually agreeable neutral third party, who shall mediate the Dispute pursuant to the Commercial Mediation Rules of the American Arbitration Association, the Alternative Dispute Resolution Service Rules of Procedure for Mediation of the American Health Lawyers Association, JAMS rules and procedures, or such other mutually agreeable rules and procedures as the Parties may decide. In the event that such mediation efforts are unsuccessful or in any Party’s discretion, either Party may pursue legal or equitable remedies in accordance with Sections 12.11 and 12.19.

ARTICLE 11

INDEMNIFICATION

11.1. Indemnification by Operating Entity. Operating Entity shall indemnify, defend and hold harmless the District and its officers, trustees, employees, agents and representatives from and against any and all third-party claims, liabilities, costs, damages, and expenses of every kind and nature (including, without limitation, court costs and reasonable attorneys’ fees) (collectively, “**Damages**”) arising out of Operating Entity’s operation of the Hospital or Parking Facility, except where such claim, liability, cost, damage, or expense is due to the gross negligence or willful misconduct of the District. This Section 11.1 shall survive termination of this Agreement.

11.2. No Liability. For the avoidance of doubt, with the exception of any liability expressly arising under this any of the Implementing Agreements or the Collaboration Agreement resulting from a breach of any of the foregoing by the District, the District shall have no liability to Operating Entity in connection with the operation of the Hospital or Parking Facility.

ARTICLE 12

GENERAL PROVISIONS

12.1. Entire Agreement. This Agreement represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations, or agreements, either written or oral, pertaining to the subject matter of this Agreement.

12.2. Amendments. This Agreement may be amended or modified only in a writing executed by Operating Entity and the Mayor. The Mayor shall have the authority to approve on

behalf of the District such amendments or modifications as the Mayor shall determine to be in the best interests of the District.

12.3. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Agreement. Furthermore, in such event, the Parties shall immediately amend this Agreement to add a provision that is legal, valid, and enforceable and as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

12.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

12.5. Incorporation of Exhibits; Recitals. All Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control. The Recitals of this Agreement are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

12.6. No Implied Waivers. No waiver by a Party of any term, obligation, condition, or provision of this Agreement shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition, or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

12.7. Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Agreement," and other similar references shall be construed to mean and include this Agreement and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Agreement to any person includes its successors and assigns (as otherwise permitted under this Agreement) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, amended, supplemented, or restated from time to time. References to any exhibits shall be construed to mean references to such exhibits as revised from time to time. The terms "include" and "including" shall be construed at all times as

being followed by the words “without limitation” or “but not limited to” unless the context specifically indicates otherwise.

12.8. Time of Performance. All dates for performance (including cure) in this Agreement shall expire at 11:59 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, District of Columbia recognized holiday, or day in which the District of Columbia government is officially closed for business is automatically extended to the next Business Day.

12.9. Notices.

12.9.1 *To District.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to the District at the following addresses:

Department of Health Care Finance 441 4th Street, NW, 900S Washington, DC 20001 Attention: Director	and	Department of General Services 2000 14 th Street, NW, 8 th Floor Washington, DC 20009 Attention: Director
--	-----	--

With copies to:

Department of Health Care Finance 441 4th Street, NW, 900S Washington, DC 20001 Attention: General Counsel	and	Department of General Services 2000 14 th Street, NW, 8 th Floor Washington, DC 20009 Attention: General Counsel
---	-----	---

12.9.2 *To Operating Entity.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to Operating Entity at the following addresses:

UHS East End Sub, LLC
c/o Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attention: General Counsel

12.9.3 Notices served upon Operating Entity or the District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (a) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (b) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (c) if given by certified mail, return receipt

requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. The Parties agree that counsel to any of them may provide notice to the other Parties under this Agreement.

12.10. Third-Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification and performance guarantee, nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against any Party, and no third party shall be deemed a third-party beneficiary of this Agreement or any provision hereof.

12.11. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.12. Anti-Deficiency Limitations.

12.12.1 Operating Entity acknowledges that the District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District's authority to make such obligations is and shall remain subject to the provisions of (a) the federal Antideficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (b) D.C. Official Code § 47-105; (c) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (d) Section 446 of the District of Columbia Home Rule Act.

12.12.2 Operating Entity acknowledges and agrees that any unauthorized action by the District is void.

12.13. No Joint Venture. The District and Operating Entity are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between them, or any third party, a relationship of principal and agent, employment, partnership, or joint venture. The Parties shall have no joint and several liability.

12.14. Litigation. Operating Entity shall furnish to the District notice of each action, suit, or proceeding before any court or other governmental body or any arbitrator that affects (a) Operating Entity's ability to fulfill its obligations under this Agreement or (b) the condition or operation (financial or other) of Operating Entity or the Hospital, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or Operating Entity's otherwise obtaining knowledge thereof.

12.15. Procurement of Materials and Supplies. To the maximum extent feasible, Operating Entity will arrange to purchase or take delivery of materials, equipment, and operating supplies in Washington, D.C., such that if sales tax is payable on such transactions, the sales tax will be payable to Washington, D.C.

12.16. Joint Preparation. The District and Operating Entity each acknowledge that it has thoroughly read and reviewed this Agreement, including all exhibits and attachments thereto, and

has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party hereto.

12.17. Time of the Essence; Standard of Performance. Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

12.18. Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

12.19. Law Applicable; Forum for Disputes. This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of District of Columbia, without reference to the conflicts of laws provisions thereof. The District and Operating Entity agree that any suit, action, or proceeding arising out of this Agreement, or any transaction contemplated hereby, shall be brought exclusively in the (a) the courts of District of Columbia, and (b) the United States District Court for the District of Columbia. The District and Operating Entity irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

12.20. Conflict of Interests; Representatives Not Individually Liable. No official or employee of the District shall participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any Washington, D.C., agency, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the District shall be personally liable to Operating Entity or any successor-in-interest in the event of any default or breach by the District or for any amount that may become due to Operating Entity or such successor-in-interest or on any obligations hereunder.

12.21. Survival. The termination or expiration of this Agreement for any reason will not affect the accrued rights or obligations of any Party under this Agreement that by their terms are intended to survive such termination or expiration.

12.22. Assignment. In the event the Lease Agreement is assigned pursuant to Section 10.2.1 thereof, Operating Entity shall have the right to assign this Agreement, without the consent or approval of the District, to such Person (as defined in Article 1 of the Lease Agreement) who is an Affiliate to whom the Lease Agreement is assigned. Except as set forth in the immediately preceding sentence, no Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Party. If assigned, only as permitted herein, this Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Where the term "Operating Entity" or "District" is used in this Agreement, it shall mean and include their respective authorized successors and assigns.

12.23. Affirmative Action. Operating Entity will affirm, through the completion of standard forms provided by DOES, that it shall ensure that employees are treated in accordance with Applicable Law during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap as and to the extent provided by Applicable Law. Such assurances by Operating Entity shall apply, but not be limited to, the following: (a) employment, upgrading, or transfer; (b) recruitment or recruitment advertising; (c) demotion, layoff, or termination; (d) rates of pay or other forms of compensation; and (e) selection for training and apprenticeship. Operating Entity agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this nondiscrimination clause. Operating Entity shall, in all solicitations or advertisements for employees placed by or on behalf of Operating Entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

12.24. Guaranty of Operating Entity Obligations. Pursuant to, and in accordance with the terms of, that certain Guaranty Agreement by UHS of even date herewith (the “**Guaranty**”), UHS shall guarantee the performance of Operating Entity under this Agreement. In the event that DHP is placed involuntarily into receivership or trusteeship by a court of competent jurisdiction, then Operating Entity may, upon written notice to the District, hold in abeyance the clinical integration activities referenced in Section 7.6(a), Section 3.3.1(a)(ii), and in the Recitals of this Agreement; provided that in such case, Operating Entity will use best efforts to ensure that patients of the Hospital continue to have ready access to (a) GWUH’s Level 1 trauma center and other tertiary and quaternary care in D.C., and (b) all care necessary to meet the acuity of their presentation. For purposes of the foregoing, the term “involuntarily” shall mean without the affirmative vote of the General Partner in DHP.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Name: [INSERT NAME]
Title: [INSERT TITLE]

UHS EAST END SUB, LLC

Name: [INSERT NAME]
Title: [INSERT TITLE]

With respect to Section 12.24, acknowledged, accepted, and agreed as of the Effective Date:

UNIVERSAL HEALTH SERVICES, INC.

Name: [INSERT NAME]
Title: [INSERT TITLE]

Exhibit A
Definitions

“**Accreditation Standards**” means the applicable standards of a health care or operational accreditation organization relevant to the operation of the Hospital or a Clinical Service (including, without limitation, TJC) as required from time to time under Applicable Law.

“**Adjustment Formula**” shall have the meaning set forth in Section 6.1.2(c).

“**Affiliate**” shall have the meaning set forth in the Lease.

“**Agreement**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**Ambulatory Facility**” shall have the meaning set forth in the Recitals.

“**Ambulatory Facility Opening Date**” shall have the meaning set forth in Section 2.1.

“**Annual Deposit**” shall have the meaning set forth in Section 6.1.1.

“**Annual Report**” shall have the meaning Section 5.2.

“**Applicable Law**” shall have the meaning set forth in Section 3.10.

“**Board**” shall have the meaning set forth in Section 5.1.

“**Business Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia, government, or days on which the District of Columbia, government is officially closed.

“**Capital Expenditures**” shall have the meaning set forth in Section 6.2.2.

“**CBE**” shall have the meaning set forth in Section 8.3.

“**CBE Act**” means the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended as of February 1, 2020 (D.C. Law 16-33; D.C. Official Code §§ 2-218.01 *et seq.*).

“**CBE Utilization Agreement**” means, pursuant to the CBE Act, the CBE Utilization Agreement between the Parties, which shall be executed pursuant to the terms of Section 8.3.

“**Charity Care**” means health services provided to Washington, D.C., residents who are (a) unable to pay for the services; and (b) not expected to pay the cost of services. Charity Care excludes “bad debt.”

“**Clinical Services**” shall have the meaning set forth in Section 3.4.

“**Collaboration Agreement**” means that certain Collaboration Agreement between the Parties, dated as of the date hereof, as may be amended from time to time.

“**Commencement Date**” shall have the meaning set forth in the Lease Agreement.

“**Community Benefits**” mean health improvement services and benefits that are provided without charge to residents of Washington, D.C.

“**Community Engagement Plan**” shall have the meaning set forth in Section 3.5.

“**CON**” shall have the meaning set forth in Section 2.1.2.

“**Core Service**” or “**Core Services**” shall have the meaning set forth in Section 3.4.1.

“**Council**” means the Council of the District of Columbia.

“**CPI**” shall have the meaning set forth in Section 6.1.2(c).

“**Credentialing Standards**” shall have the meaning set forth in Section 2.1.4.

“**Damages**” shall have the meaning set forth in Section 11.1.

“**Deficit**” shall have the meaning set forth in Section 6.1.1(a).

“**Deficit Notice**” shall have the meaning set forth in Section 6.1.1(a).

“**Development Agreement**” means that certain Development Agreement between the District and UHS Building Solutions, Inc., dated as of the date hereof, as may be amended from time to time.

“**Development Entity**” shall have the meaning set forth in the Recitals.

“**DHCF**” shall have the meaning set forth in Section 6.1.2(b).

“**DHP**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**Dispute**” shall have the meaning set forth in ARTICLE 10.

“**District**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**DOES**” shall have the meaning set forth in Section 8.4.1.

“**Effective Date**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**EHR Equipment**” shall have the meaning set forth in Section 2.1.1.

“**EHR/IT Investments**” shall have the meaning set forth in Section 7.3.

“**Enhanced MCO Rate**” shall have the meaning set forth in Section 6.1.2(a).

“**Enhanced Medicaid Rate**” shall have the meaning set forth in Section 6.1.2(b).

“Enhanced Payment Rate” shall have the meaning set forth in Section 6.1.2(d).

“Final Completion Date” shall have the meaning set forth in the Development Agreement.

“First Source Act” shall have the meaning set forth in Section 8.2.

“First Source Agreement” means that certain First Source Employment Agreement between the Parties in connection with the operation of the Hospital and Parking Facility, which shall be executed pursuant to the terms of Section 8.2.

“Foggy Bottom Facility” shall have the meaning set forth in the Recitals.

“Foggy Bottom Hospital” shall have the meaning set forth in the Recitals.

“General Hospital” shall have the meaning of “Hospital, general” as defined in Title 22, Chapter B20 of the District of Columbia Municipal Regulations.

“Governmental Authority” means the United States of America, Washington, D.C., and any agency, department, commission, board, bureau, instrumentality, or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Operating Entity or the Leased Premises (as defined in the Lease Agreement) or any portion thereof, or any street, road, avenue, or sidewalk comprising a part of, or in front of, the Leased Premises, or any vault under or adjacent to the Leased Premises, or airspace over the Leased Premises.

“Guaranty” shall have the meaning set forth in Section 12.24.

“GW” shall have the meaning set forth in the Recitals.

“GW SOM” shall have the meaning set forth in Section 3.8.

“Handover Process” shall have the meaning set forth in the Lease.

“Health Care Infrastructure” shall have the meaning set forth in Section 7.1.

“Health Care Laws” means all federal, state and local laws, statutes, rules, regulations, ordinances and codes applicable to health care providers and facilities; federal and state health care program conditions of participation, standards, policies, rules, procedures and other requirements; and accreditation standards of any applicable accrediting organization including, without limitation, the following laws: the federal (Title XIX of the Social Security Act) and state Medicaid programs and their implementing regulations, the Medicare Program (Title XVIII of the Social Security Act) and its implementing regulations, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the Federal Health Care Program Anti-Kickback Statute (42 U.S.C. § 1320a 7b(b)), the Federal Physician Self-Referral Law (42 U.S.C. § 1395nn), the Federal Civil False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. § 1320d 1329d 8; 45 C.F.R. Parts 160 and 164), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C. § 290ee 3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health

Administration statutes and regulations for blood-borne pathogens and workplace risks, and any state and local laws that address the same or similar subject matter; and laws related to federal and state health care program billing, cost reporting, revenue reporting, payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health care services, human and social services, and other health-related services; employee background checks and credentialing of employees; credentialing and licensure of facilities or providers of such services; zoning, maintenance, safety and operations of group homes, residential facilities and day programs, and other building health and safety codes and ordinances; certificate of need laws; state law restrictions on the corporate practice of medicine (or the corporate practice of any other health-related profession); eligibility for federal and state health care program contracting, including, without limitation, any requirements limiting contracting to nonprofit or tax-exempt entities; patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; and advertising or marketing of health care services.

“**Hospital**” shall have the meaning set forth in the Recitals.

“**Hospital Fund**” shall have the meaning set forth in Section 6.1.1.

“**Hospital Licenses**” shall have the meaning set forth in Section 2.1.2.

“**Hospital Necessities**” shall have the meaning set forth in Section 2.1.1.

“**Hospital Opening Date**” shall have the meaning set forth in Section 2.1.

“**Implementing Agreements**” means, collectively, this Agreement, the Development Agreement, and the Lease Agreement.

“**Infrastructure Investment Amount**” shall have the meaning set forth in Section 7.1.

“**Inpatient Hospital**” shall have the meaning set forth in the Recitals.

“**Joint Meeting**” shall have the meaning set forth in Section 5.2.

“**Lease Agreement**” means that certain Lease Agreement between the Parties, dated as of the date hereof, as may be amended from time to time.

“**Material Breach**” means, with respect to (i) Operating Entity, Operating Entity’s failure to materially comply with ARTICLE 2 [Pre-Opening Covenants of Operating Entity], ARTICLE 3 [Operations Covenants], ARTICLE 4 [Service Standards and Quality Standards], ARTICLE 5 [Governance], Section 6.2 [Operating Entity’s Commitment], ARTICLE 7 [Health Care Infrastructure Investments], or ARTICLE 8 [Community Investments], and (ii) the District, failure of the District to comply with Section 6.1.1 [Hospital Fund] or Section 6.1.2 [Enhanced Medicaid Rates].

“**Material Medicaid Change**” shall have the meaning set forth in Section 6.1.2(d).

“**Mayor**” shall have the meaning set forth in Section 3.4.2.

“**Medicaid MCO**” shall have the meaning set forth in Section 6.1.2(a).

“**Medicaid Rate Commencement Date**” shall have the meaning set forth in Section 6.1.2(c).

“**Medical Staff Bylaws**” shall have the meaning set forth in Section 2.1.4.

“**Member**” shall mean any Person with an ownership interest in Operating Entity.

“**MFA**” shall have the meaning set forth in Section 3.3.1.

“**Minimum Bed Capacity**” shall have the meaning set forth in Section 3.4.1.

“**Modified Lease Option**” shall have the meaning set forth in the Lease Agreement.

“**NLRA**” shall have the meaning set forth in Section 3.12.4.

“**Operating Entity**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**Parking Facility**” shall have the meaning set forth in the Recitals.

“**Parking Facility Opening Date**” shall have the meaning set forth in Section 2.1.

“**Parking Licenses**” shall have the meaning set forth in Section 2.1.2.

“**Party(ies)**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**Permitted Transfer**” shall have the meaning set forth in the Lease Agreement.

“**Person**” shall mean any individual, corporation, limited liability company, trust, partnership, association, or other entity.

“**PFAC**” has the meaning set forth in Section 4.2.

“**PM Investments**” shall have the meaning set forth in Section 7.3.

“**Purchase Option**” shall have the meaning set forth in the Lease Agreement.

“**Quality Program**” means (a) any neutral, third-party rankings and accreditation standards (including the Accreditation Standards), including, without limitation and by means of example, Leapfrog rankings, Press Ganey scores, TJC classification, and any Medicare quality ranking applicable to an inpatient hospital, and (b) any formula or methodology developed by an

independent third party broadly used in the field that a hospital or health system may use to self-score its quality and safety outcomes.

“**Quality Standards**” shall have the meaning set forth in Section 4.1.

“**Services**” shall have the meaning set forth in Section 3.1.

“**Service Standards**” shall have the meaning set forth in Section 4.1.

“**SHPDA**” shall have the meaning set forth in Section 2.1.3.

“**Substantial Completion**” shall have the meaning set forth in the Development Agreement.

“**Substantial Completion Date**” shall have the meaning set forth in the Development Agreement.

“**Term**” shall have the meaning set forth in Section 9.1.

“**TJC**” shall have the meaning set forth in Section 4.1.3.

“**Transfer**” shall have the meaning set forth in the Lease Agreement.

“**UHS**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**UHS Executive**” shall have the meaning set forth in Section 5.2.

“**UMC**” shall have the meaning set forth in Section 8.4.3.

“**Uncompensated Care**” means the cost of health care services rendered to District residents for which the Hospital does not receive payment. Uncompensated Care includes “bad debt” and Charity Care, but does not include contractual allowances from third-party payors.

“**Ward 7**” means that portion of the District of Columbia identified by Council as Ward 7 from time-to-time in accordance with D.C. Official Code § 1-1011.01, except for any portion of such ward that is located west of the Anacostia River.

“**Ward 7 Facility**” shall have the meaning set forth in Section 7.3.

“**Ward 8**” means that portion of the District of Columbia identified by Council as Ward 8 from time-to-time in accordance with D.C. Official Code §1-1011.01, except for any portion of such ward that may be located west of the Anacostia River.

“**Ward 8 Facility**” shall have the meaning set forth in Section 7.3.

“**Ward 7 and 8 Investments**” shall have the meaning set forth in Section 7.3.

Exhibit B

Clinical Services

The foregoing chart sets forth the clinical services to be provided at the Hospital. This chart may be updated and refined, upon the mutual agreement of the Parties, as planning progresses under the Development Agreement, including, without limitation, the receipt of community input through the Community Engagement Plan.

Unless otherwise specified in the chart below, these services will be offered at the Hospital. Services that may be offered off the Hospital campus are designated with an asterisk (*).

Service level and location of services is noted in the chart below by shaded color coding (Inpatient, blue; Outpatient/Ambulatory Services, green; Hospital-Based Services, yellow; Partnership, orange) and an “√” is marked in each shaded box.

Where it states “Complexity to be determined,” complexity of the service shall be determined by the Operating Entity, in consultation with the District and in consideration of community input through the Community Engagement Plan, prior to the opening of the applicable component of the Hospital.

Note: Specific offerings in each service line will be determined by Operating Entity in collaboration with Chairs of each Department based on the complexity of services.

Definitions:

- *Inpatient:* Services provided to patients who are admitted to the Hospital.
- *Outpatient/Ambulatory:* Services provided to patients who are not admitted to the Hospital, but are provided in an outpatient clinic or ambulatory setting.
- *Hospital-Based Services:* Services required to support hospital operations that provide clinical care that are limited to medical staff of the MFA or such other physicians providing hospital-based services at the Hospital pursuant to Section 3.3.1 of the Agreement.
- *Partnership:* Services provided under agreements or arrangements with third-party health care providers in the community and throughout Washington, D.C.

Operating Entity at St. Elizabeths Proposed Clinical Services

Medicine and Specialty Services				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
General Medicine	✓	✓		
Cardiology	✓	✓		
Pulmonology	✓	✓		
Nephrology	✓	✓		
Oncology		✓		
Ophthalmology		✓		
Neurology	✓ Consult; Telehealth	✓		
Endocrinology		✓		
GI	✓ Call Team	✓		
Rheumatology		✓		
Observation		✓		
Pediatric Observation		✓		
Infectious Disease	✓	✓		
Palliative Care	✓			

Surgical				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
General Surgery	✓	✓		
Neurosurgery		✓		
ENT	✓ Call Team	✓		
Orthopedic	✓	✓		
Cardiac		✓		
Plastics	✓	✓		
Vascular	✓ (Complexity to be determined)	✓		
Urology	✓	✓		
Thoracic		✓		
Gynecology	✓	✓		
Colorectal	✓	✓		
Podiatry	Consult	✓		

Critical Care				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
Emergency Medicine		✓	✓	
Pediatric Emergency Medicine ¹		✓	✓	✓
ICU	✓		✓	
Anesthesiology	✓	✓	✓	

Behavioral				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
Acute	✓ [Complexity to be determined]			✓
Outpatient	✓ [Complexity to be determined]	✓		✓
Medpsych	✓ [Complexity to be determined]	✓		✓

Women's ²				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
Obstetrics	✓	✓	✓	
Normal Newborns	✓	✓		
Neonatology	✓ Level 2	✓		
Outpatient Pediatric				✓

¹Operating Entity to enter into an LOI to address pediatric emergency services.

²Services to be provided consistent with Section 3.4.3 of the Agreement.

Ancillary/Support				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
Radiology	✓	✓	✓	
Lab	✓	✓	✓	
Dialysis	✓	✓		✓
Rehabilitation Services	✓	✓		
Non-Invasive Cardiology (ECHO, Stress)	✓	✓		
Wound Care	✓			

Subacute				
Service Lines	Inpatient Services	Outpatient/ Ambulatory Services	Hospital-Based Services	Partnership
Skilled Nursing Facility*				✓

Exhibit C

Form of Annual Report

The following report (the “**Annual Report**”) is provided by UHS East End Sub, LLC (“**Operating Entity**”) to the Mayor (“**Mayor**”) of the Government of the District of Columbia (the “**District**”) pursuant to Section 5.2 of that certain Hospital Operations Agreement by and between Operating Entity and the District dated as of [____], 20__ (“**Agreement**”).

This report sets forth the status of Operating Entity’s compliance obligations under the Agreement, and attached hereto are the audited and unaudited financial statements of the entity operating the Hospital (as defined in the Agreement) and Parking Facility (as defined in the Agreement) for the immediately preceding two fiscal years and balance sheet, statement of cash flows, and days cash on hand for the fiscal quarter just ended.

I, _____, Chairperson of Operating Entity attest and affirm that, to the best of my knowledge, confirmed upon reasonable inquiry, as applicable, that the information contained in this Annual Report is true and correct as of the date set forth below my signature below.

[Name]
Chairperson
Operating Entity

Date

Compliance Report:

Operations Covenants (ARTICLE 3)

Clinical Service Lines (Section 3.4)

[Attach chart in the form of Exhibit A to the Agreement detailing the service lines available at the Hospital and its affiliated locations.]

[Describe any modifications to the Clinical Services or the Core Services, pursuant to Section 3.4.2 of the Agreement.]

Community Engagement (Section 3.5)

[Describe the status of Operating Entity's implementation of the Community Engagement Plan.]

Population Health (Section 3.6)

[Describe the status of Operating Entity's implementation of the population health initiatives.]

Uncompensated Care and Community Benefits (Section 3.7)

[Provide report on Uncompensated Care and Community Benefits expenditures.]

Compliance with Law (Section 3.9)

Since [DATE OF LAST ANNUAL REPORT], the Hospital has operated in material compliance with all material Health Care Laws (as defined in the Agreement) relating to the Hospital and to the Hospital Licenses (as defined in the Agreement), and the Parking Facility has operated in material compliance with Applicable Laws. Any actions, inquiries, investigations, or audits of any Governmental Authority or any third party with regulatory authority over the Hospital or Parking Facility, which, individually, or in the aggregate, may have a material and detrimental effect on the operations of the Hospital or Parking Facility, as applicable, are detailed in an Exhibit attached hereto.

Licenses (Section 3.11)

Exhibit [] attached hereto lists all Hospital Licenses held by the Hospital and Parking Licenses held by the Parking Facility. Each Hospital License and each Parking License is, and has been since the [DATE OF THE LAST ANNUAL REPORT], in full effect and has not been deemed invalid, restricted, suspended or otherwise adversely affected by the acts or omissions of Operating Entity or any of its directors, officers, employees, agents, or representatives.

Service Standards and Quality Standards (ARTICLE 4)

Adherence to Service Standards and Quality Standards is addressed in the Quality Report (as defined in the Agreement) attached hereto.

[If applicable, identify any Services or Quality Standards Gaps and applicable remediation.]

Financial Commitments (ARTICLE 6)

Deficits (Section 6.1.1)

[Insert information needed to calculate, audit, and evaluate Deficits.]

Maintenance of Facilities and Capital Expenditures (Sections 3.2 and 6.2.2)

[Attach Exhibit of Capital Expenditures (as defined this Agreement) and Significant Alterations (as defined in the Lease Agreement).]

Health Care Infrastructure Investments (ARTICLE 7)

Health Care Infrastructure Investments

[Summarize progress on (a) the construction of the Ward 7 and 8 Investments, including a report on whether such investments (each individually listed) are proceeding on time and the amount of funds expended on the Ward 7 and 8 Investments during the report year and on a cumulative basis, and (b) the additional projects identified for investment with the remainder of the Infrastructure Investment Amount on other health care infrastructure projects in Ward 7 and Ward 8, including, including a report on whether each such investment is proceeding on time and the amount of funds expended during the report year and on a cumulative basis for each such investment.]

Additional Investments

[Summarize any additional health care infrastructure investments Operating Entity is making within Washington, D.C. Include a description of the equivalence in investments and service line offerings between investments in Ward 7 and Ward 8 and other Wards within Washington, D.C.]

Community Investments (ARTICLE 8)

Hiring of District Residents (Section 8.2)

[Provide a report on Operating Entity's compliance with the First Source Agreement.]

Utilization of District-Owned Businesses (Section 8.3)

[Provide a report on Operating Entity's compliance with the CBE Utilization Agreement.]

Workforce Development (Section 8.4)

[Provide report on Operating Entity workforce development initiatives.]

Financial Report:

[Attached hereto]

Exhibit D: Operating Entity Estimated Minimum Amount of Health Care Infrastructure Investments³

\$ in 000's

Description of Investment	FY21	FY22	FY23	FY24 ⁴	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	Sub-Total
Build Out and Equipment for Urgent/Ambulatory Care Facility in Ward 7 or 8 ⁵	\$1.0													\$1.0
Build Out and Equipment for Urgent/Ambulatory Care Facility in Ward 7 or 8 ⁶			\$20.0											\$20.0
Capital Support for the above Urgent and Ambulatory Facilities in Wards 7 and 8		\$0.1	\$0.2	\$0.2	\$0.2	\$0.2	\$0.3	\$0.3	\$0.3	\$0.3	\$0.4	\$0.5	\$0.5	\$3.5M
Capital Support at New Ambulatory Center and Hospital at St. Elizabeths Including but not limited to: <ul style="list-style-type: none"> • Electronic Health Records Systems • Equipment • Capital Improvements and Replacement • IT Infrastructure 	<i>Facilities under Design and Construction during this time.</i>			\$1.1	\$1.8	\$2.2	\$5.4	\$6.0	\$6.6	\$7.2	\$7.8	\$8.4	\$9.1	\$55.6
Total	\$1.0	\$0.1	\$20.2	\$1.3	\$2.0	\$2.4	\$5.7	\$6.3	\$6.9	\$7.5	\$8.2	\$8.9	\$9.6	\$80.1M

In-Kind Investments	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	Sub-Total
Program Manager for Project Design and Construction	\$2.275	\$2.275	\$2.275	\$2.275										\$9.1M

Total Estimated Investments	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	Total
	\$3.125	\$2.225	\$22.325	\$3.725	\$2.3	\$2.4	\$5.7	\$6.3	\$6.9	\$7.5	\$8.2	\$8.9	\$9.6	\$89.2M

³ These amounts and times are subject to change based on the receipt of any Certificate of Need approvals.

⁴ Assumes that the Ambulatory Facility and the Inpatient Hospital and Garage at St. Elizabeths opens in calendar year 2023 and 2024 respectively.

⁵ These facilities will be NOT be located at St. Elizabeths but at another location in Ward 7 or 8 still to be determined.

⁶ These facilities will be NOT be located at St. Elizabeths but at another location in Ward 7 or 8 still to be determined.

LEASE AGREEMENT

between

DISTRICT OF COLUMBIA

as Landlord

and

UHS EAST END SUB, LLC,
a wholly-owned subsidiary of Universal Health Services, Inc.,

as Tenant

[Parcel 2 at St. Elizabeths Campus]
[Square 5868-S, Lot 0859]

Dated as of _____, 20____

Table of Contents

	Page
ARTICLE 1	DEFINITIONS..... 2
ARTICLE 2	LEASE OF LEASED PREMISES 14
2.1.	Lease 14
2.2.	Use 14
2.3.	Prohibited Uses 14
2.4.	Quiet Enjoyment 15
2.5.	Title to Improvements and Personal Property 15
2.6.	Easements; District Access 17
2.7.	“As Is, Where Is” Lease..... 17
ARTICLE 3	TERM 19
3.1.	Term of Lease 19
3.2.	Early Termination 19
3.3.	Return of Leased Premises and Handover Standards 20
3.4.	Holding Over 21
3.5.	Purchase Option 21
3.6.	Modified Lease Option 24
ARTICLE 4	RENT, IMPOSITIONS, AND GUARANTY..... 25
4.1.	Base Rent 25
4.2.	Participation Rent..... 25
4.3.	Additional Rent..... 25
4.4.	No Offsets or Deductions..... 26
4.5.	Manner of Payment..... 26
4.6.	Late Charge 26
4.7.	Payment of Impositions 26
4.8.	Guaranty..... 28
ARTICLE 5	APPLICABLE LAW 28
5.1.	Compliance with Applicable Law 28
5.2.	Right to Contest 30
5.3.	Nondiscrimination Covenants..... 30
ARTICLE 6	REPRESENTATIONS AND WARRANTIES..... 31
6.1.	District’s Representations and Warranties..... 31
6.2.	Tenant’s Representations and Warranties..... 32
ARTICLE 7	TENANT COVENANTS; MAINTENANCE AND REPAIR; UTILITIES..... 33

Table of Contents
(continued)

	Page
7.1. Tenant's Affirmative Covenants Specified.....	33
7.2. Maintenance of Leased Premises.....	34
7.3. Utilities.....	36
ARTICLE 8 ALTERATIONS	36
8.1. Alterations Generally	36
8.2. Performance of Alterations	36
ARTICLE 9 DEFAULTS AND REMEDIES	38
9.1. Tenant's Default.....	38
9.2. Remedies for Tenant's Default	39
9.3. Waiver by Tenant.....	41
9.4. Accrual of Interest.....	41
9.5. Attorney's Fees	41
9.6. Remedies Cumulative	41
9.7. No Waiver	41
9.8. Remedies for District's Default	42
9.9. Mitigation.....	42
9.10. Limitation on Remedies	42
9.11. Excuse for Non-Performance.....	42
ARTICLE 10 TRANSFER	43
ARTICLE 11 EXCULPATION AND INDEMNIFICATION	47
11.1. District Not Liable for Injury or Damage, Etc	47
11.2. District's Exculpation	47
11.3. Indemnification of District.....	47
11.4. Defense of Claim, Etc	49
11.5. Notification and Payment	49
11.6. Survival	49
ARTICLE 12 INSURANCE AND CASUALTY	50
12.1. Insurance Requirements	50
12.2. District Right to Obtain Insurance	50
12.3. No Invalidation of Insurance	50
12.4. Space Leases	50
12.5. Disclosure of Information	50
12.6. Casualty.....	51
ARTICLE 13 LEASEHOLD MORTGAGES	52
13.1. Leasehold Mortgages Permitted	52

Table of Contents
(continued)

	Page
13.2. Leasehold Mortgage Proceeds	52
13.3. Leasehold Mortgage Submissions	52
13.4. Effect of Permitted Mortgages	53
13.5. Restrictions on Use of Proceeds of Permitted Mortgage	54
ARTICLE 14 EMINENT DOMAIN	54
14.1. Total Condemnation.....	54
14.2. Partial Condemnation.....	54
14.3. Temporary Taking	54
14.4. Allocation of Award	55
14.5. Tenant’s Restoration	55
ARTICLE 15 GENERAL PROVISIONS	56
15.1. Entire Agreement	56
15.2. Amendments	56
15.3. Severability	56
15.4. Counterparts	56
15.5. Incorporation of Exhibits; Recitals	56
15.6. No Implied Waivers	56
15.7. Successors and Assigns.....	57
15.8. Interpretations	57
15.9. Time of Performance	57
15.10. Notices	57
15.11. Memorandum of Lease	58
15.12. Third Party Beneficiaries	58
15.13. Waiver of Jury Trial.....	58
15.14. Anti-Deficiency Limitations	59
15.15. No Joint Venture	59
15.16. Litigation.....	59
15.17. Procurement of Materials and Supplies	59
15.18. Rule Against Perpetuities.....	59
15.19. Estoppel Certificates	59
15.20. Joint Preparation	60
15.21. Time of the Essence; Standard of Performance	60
15.22. Further Assurances.....	60
15.23. Law Applicable; Forum for Disputes	60
15.24. Conflict of Interests; Representatives Not Individually Liable	60
15.25. Landlord’s Lien.....	61

Exhibit List

Legal Description of Land	Exhibit A
Minimum Insurance Requirements.....	Exhibit B
Appraisal Protocols.....	Exhibit C
Calculation of Participation Rent.....	Exhibit D
List of Environmental Reports.....	Exhibit E
Early Termination Payment Schedule	Exhibit F
Payment Instructions.....	Exhibit G
Form of Guaranty.....	Exhibit H
Additional Tenant Requirements	Exhibit I
Handover Process and Standards.....	Exhibit J
Form of Acknowledgment of Commencement Date	Exhibit K

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Lease**”), dated as of _____, 20____ (“**Execution Date**”), is entered into by and between the **GOVERNMENT OF THE DISTRICT OF COLUMBIA**, a municipal corporation (“**District**”), and **UHS EAST END SUB, LLC**, a wholly-owned subsidiary of Universal Health Services, Inc. (“**UHS**”) (together with its permitted successors and assigns, “**Tenant**”).

RECITALS:

A. WHEREAS, District is the fee simple owner of the parcel of real property located on the St. Elizabeths East Campus in the District of Columbia being known for assessment and taxation purposes as Lot 0859, Square 5868-S and further described in Exhibit A, attached hereto and incorporated herein (the “**Land**”).

B. WHEREAS, simultaneously herewith, District, Tenant, and UHS Building Solutions, Inc., an Affiliate of UHS (“**Development Entity**”), entered into a Collaboration Agreement (as may be amended in accordance with its terms, the “**Collaboration Agreement**”) outlining a collaboration between the Parties with respect to the construction and operation of the Hospital (defined below) and the Parking Facility (defined below) and other related matters.

C. WHEREAS, simultaneously herewith, District and Development Entity entered into a Development Agreement (as may be amended in accordance with its terms, the “**Development Agreement**”) pursuant to which District contracted with Development Entity to serve as Program Manager for the design and construction of the Hospital, Parking Facility, and supporting facilities and infrastructure on the terms and conditions set forth therein.

D. WHEREAS, simultaneously herewith, District and Tenant entered into a Hospital Operations Agreement (as may be amended in accordance with its terms, the “**Hospital Operations Agreement**”) pursuant to which Tenant agreed to operate the Hospital and Parking Facility in accordance with the terms and conditions set forth therein.

E. WHEREAS, District desires to lease the Leased Premises (defined below) to Tenant after Substantial Completion (defined below) of each of the Inpatient Hospital (defined below), Ambulatory Facility (defined below), and Parking Facility and Tenant desires to use, operate, maintain, and improve the same in accordance with the terms and conditions of this Lease and the Hospital Operations Agreement.

F. WHEREAS, the Council of the District of Columbia authorized the Mayor to lease the Land, and any improvements existing thereon as of the applicable Commencement Date, in [authorizing Act name, citation, and effective date].

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants, and agreements set forth herein, and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Tenant hereby agree as follows:

ARTICLE 1 DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

“Additional Rent” shall have the meaning set forth in Section 4.3.

“Affiliate” means with respect to any Person (“first Person”) (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member, or trustee of such first Person, or (iii) any officer, director, general partner, manager, member, or trustee of any Person described in clauses (i) or (ii) of this sentence.

“Alterations” shall have the meaning set forth in Section 8.1.

“Ambulatory Facility” shall mean the ambulatory pavilion and outpatient facilities associated with the Inpatient Hospital constructed on the Land in accordance with the Development Agreement.

“Applicable Law” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Health Care Laws, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and the Davis-Bacon Act.

“Appraisal” means an appraisal obtained in accordance with the protocols set forth in Exhibit C.

“Appraised Value” shall mean such value, if any, determined in accordance with Exhibit C.

“Approval(s)” means all governmental approvals related to any subdivision, tax lot designations, street closing, zoning relief, land use or historic preservation, including, without limitation, approval by the Historic Preservation Review Board and National Capital Planning Commission.

“Architect” means an architect of record licensed to practice architecture in the District of Columbia, which has been selected by Tenant and approved by District, which approval shall not be unreasonably withheld, conditioned, or delayed.

“Base Rent” shall have the meaning set forth in Section 4.1.

“Bonds” shall mean the debt instruments issued by District for the purpose of funding the site preparation, design, construction, furnishing, equipment, and commissioning of the Improvements in accordance with the Development Agreement. Upon issuance of such Bonds, District shall provide to Tenant the trust indenture identifying the total principal amount of such Bonds and the relevant repayment terms of such Bonds.

“**Business Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government or days on which the District of Columbia government is officially closed.

“**Casualty Restoration**” shall have the meaning set forth in Section 12.6.2.

“**Certificate of Substantial Completion**” shall have the meaning set forth in the Development Agreement.

“**Collaboration Agreement**” shall have the meaning set forth in the Recitals.

“**Commencement Date**” shall have the meaning set forth in Section 3.1.1.

“**Commitment**” shall have the meaning set forth in Section 3.5.5.

“**Component**” in the singular, shall mean each of the Ambulatory Facility, the Inpatient Hospital, or the Parking Facility, and in the plural, two or more of the foregoing, as applicable.

“**Control**” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners, or Persons exercising similar authority with respect to the subject Person. The terms “**Control**,” “**Controlling**,” “**Controlled by**,” or “**under common Control with**” shall have meanings correlative thereto.

“**CPI**” means the Consumer Price Index for all Urban Consumers (CPI-U), Washington-Arlington-Alexandria.

“**Default Rate**” means the annual rate of interest that is the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Law, which shall be applied to any amount when owed hereunder beyond any applicable grace period.

“**Development Agreement**” shall have the meaning set forth in the Recitals.

“**Direct Assignment**” means any Transfer that (i) results in a change of the direct ownership interests in Tenant that exceeds fifty percent (50%) of the ownership interests in Tenant, on a cumulative basis and in one transaction or two or more related transactions, or (ii) that results in a direct change of Control of Tenant, or (iii) that results in a substitution of a new entity as Tenant under this Lease.

“**District**” shall have the meaning set forth in the Preamble.

“**District Indemnified Parties**” shall mean, collectively, the District of Columbia, including, without limitation, any agencies, instrumentalities, and departments thereof, and its elected and

appointed officials (including, without limitation, the Mayor and the Council), officers, directors, agents, and employees.

“District’s Personal Property” shall have the meaning set forth in Section 2.5.3.

“DOES” is the District of Columbia Department of Employment Services or any successor agency.

“Early Termination Payment” shall have the meaning set forth in Section 3.2.1.

“Environmental Condition” shall mean any condition, on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages.

“Environmental Damages” shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of an Environmental Condition that first occurs after the Commencement Date for the applicable Component, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories, and all other costs incurred in connection with investigation, remediation, and mitigation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration, or monitoring work.

“Environmental Laws” shall mean any present and future federal, state, or local law and any amendments (whether common law, statute, rule, order, regulation, or otherwise), permits, and other requirements or guidelines of Governmental Authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order, or directive issued

thereunder.

“Equity Interest” shall mean with respect to any entity (a) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust, or a similar entity; (b) the legal (other than as a nominee) or beneficial ownership of any partnership, membership, or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company, or similar entity; (c) the legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust; and (d) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Execution Date” shall have the meaning set forth in the Preamble.

“Expiration Date” shall mean that date immediately preceding the seventy-fifth (75th) anniversary of the Commencement Date for the Component comprising the Inpatient Hospital, as such date may be modified in accordance herewith, including the effective time of a termination in accordance with Section 3.2.

“Force Majeure” shall mean an act or event, including, as applicable, an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation; strike, lockout, or other actions of labor unions; a taking by eminent domain or requisition; and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Commencement Date; so long as such act or event: (i) is not within the reasonable control of the applicable Party, or as to Tenant, Tenant’s Agents or its Members; (ii) is not due to the fault or negligence of the applicable Party, or, as to Tenant, Tenant’s Agents or its Members; (iii) is not reasonably avoidable by the applicable Party, or, as to Tenant, Tenant’s Agents or its Members; and (iv) directly results in a delay in performance by the applicable Party; but specifically excluding: (a) shortage or unavailability of funds or Tenant’s financial condition or (b) the acts or omissions of the applicable Party, or, as to Tenant, its general contractor, its subcontractors, or any of Tenant’s Agents or Members.

“General Hospital” shall have the meaning of “Hospital, general” as defined in Title 22, Chapter B20 of the District of Columbia Municipal Regulations.

“Governmental Authority” means the United States of America, the District of Columbia, and any agency, department, commission, board, bureau, instrumentality, or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Tenant or the Leased Premises or any portion thereof, or any street, road, avenue, or sidewalk comprising a part of, or in front of, the Leased Premises, or any vault serving the Leased Premises under or adjacent to the Leased Premises, or airspace over the Leased Premises.

“**Guarantor**” shall mean, subject to the terms of the Guaranty, UHS, or such other guarantor approved by District pursuant to Section 4.8.

“**Guaranty**” means a guaranty, in the form attached as Exhibit H, executed by the Guarantor.

“**Handover Process**” means the process whereby the operations are transferred, the Improvements are assessed, and any Renewal Works are performed prior to transfer of the Improvements to District or a third party designated by District upon the Expiration Date, all as set forth in Exhibit J.

“**Handover Standards**” shall have the meaning set forth in Exhibit J.

“**Hazardous Materials**” means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” or “toxic pollutant,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which could be detrimental to the Leased Premises or hazardous to health or the environment.

“**Health Care Laws**” means all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes applicable to health care providers and facilities; federal and state health care program conditions of participation, standards, policies, rules, procedures, and other requirements; and accreditation standards of any applicable accrediting organization including, without limitation, the following laws: the federal (Title XIX of the Social Security Act) and state Medicaid programs and their implementing regulations, the Medicare Program (Title XVIII of the Social Security Act) and its implementing regulations, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the Federal Health Care Program Anti-Kickback Statute (42 U.S.C. § 1320a 7b(b)), the Federal Physician Self Referral Law (42 U.S.C. § 1395nn), the Federal Civil False Claims Law (42 U.S.C. § 1320a 7b(a)), the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. § 1320d 1329d 8; 45 C.F.R. Parts 160 and 164), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C. § 290ee 3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health Administration statutes and regulations for blood-borne pathogens and workplace risks, and any state and local laws that address the same or similar subject matter; and laws related to federal and state health care program billing, cost reporting, revenue reporting, payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health

care services, human and social services, and other health-related services; employee background checks and credentialing of employees; credentialing and licensure of facilities or providers of such services; zoning, maintenance, safety and operations of group homes, residential facilities and day programs, and other building health and safety codes and ordinances; certificate of need laws; state law restrictions on the corporate practice of medicine (or the corporate practice of any other health-related profession); eligibility for federal and state health care program contracting, including, without limitation, any requirements limiting contracting to nonprofit or tax-exempt entities; patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; and advertising or marketing of health care services.

“**Hospital**” shall mean, collectively, the Inpatient Hospital and the Ambulatory Facility.

“**Hospital Licenses**” shall have the meaning set forth in Section 5.1.1.

“**Hospital Operations Agreement**” shall have the meaning set forth in the Recitals.

“**Imposition(s)**” shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant, or restriction affecting the Leased Premises: (1) real property taxes, possessory interest tax, and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property taxes; (3) water, water meter, and sewer rents, rates, and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental levies of general application, fees, rents, assessments, or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation, and water supply; (9) fees, assessments, or charges payable by District or Tenant under any lien, encumbrance, covenant, or restriction affecting the Leased Premises; and (10) any fines, penalties, and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

“**Improvement(s)**” shall mean any building (including footings and foundations) and other improvements, equipment, and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Land or within the air space above the Land (whether temporary or permanent).

“**Inpatient Hospital**” shall mean the General Hospital constructed on the Land in accordance with the Development Agreement.

“**Institutional Lender/Investor**” means a lender or investor that is not a Prohibited Person, Tenant, or an Affiliate of Tenant and is (i) a commercial bank, investment bank, investment

company, savings and loan association, trust company, or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing-related subsidiary of a Fortune 500 company; (iii) an insurance company, acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i)-(xi) hereof; (iv) a public employees' pension or retirement system; (v) a pension, retirement, or profit sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), real estate mortgage investment conduit, hedge fund, private equity fund or securitization trust or similar investment entity; (vii) an endowment having total assets of at least \$500,000,000.00; (viii) any federal, state, or District of Columbia agency regularly making, purchasing or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (ix) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than \$500,000,000.00 in assets; (x) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its interest in this Project, or any portion thereof, is obtained) of at least \$500,000,000.00; (xi) a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended (or an institution substantially similar to the foregoing), provided that such entity under item (xi) (a) has total assets (in name or under management) in excess of \$500,000,000 and capital/statutory surplus or shareholders' equity in excess of \$250,000,000, and (b) is regularly engaged in the business of making or owning commercial real estate loans (or interests therein), real estate equity investments or operating commercial properties; (xii) a sovereign wealth fund having total assets of at least \$1,000,000,000; (xiii) a corporation, other entity or joint venture that is a wholly owned subsidiary or combination of one or more of the foregoing entities (including, without limitation, any of the foregoing entities described in clauses (i) through (xii) when acting as trustee or manager for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders/Investors (but provided that such other lender(s) or investor(s) are not Prohibited Persons); or (xiv) such other lender or equity investor, subject to approval of District in its sole and absolute discretion, provided that such other lender or equity investor is at the time of making the loan or investment of a type which is then customarily used as an investor or lender on projects like the portion of the Leased Premises or Improvements, as applicable, for which the proceeds of such loan or equity investment are to be used.

"Land" shall have the meaning set forth in the Recitals.

"Land Records" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"Lease" shall have the meaning set forth in the Preamble.

"Lease Term" shall have the meaning set forth in Section 3.1.2.

“Leased Premises” shall mean (a) the Land, (b) all Improvements existing on the Land as of the Commencement Date, (c) any and all Improvements from time to time constructed by Tenant on the Land, and (d) all appurtenances, rights, easements, rights-of-way, tenements, and hereditaments now or hereinafter incident to the Land.

“Leasehold Estate” shall mean Tenant’s interest in this Lease.

“Leasehold Mortgage” shall mean any mortgage, deed of trust, or other similar security instrument (including all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications, and amendments thereof) made for the benefit of an Institutional Lender/Investor in accordance with the terms and provisions of this Lease that secures a loan made to Tenant for capital improvements of the Hospital or the Parking Facility by a Leasehold Mortgage (or its predecessor in interest) and constitutes a lien on the Leasehold Estate.

“Leasehold Mortgagee” shall mean an Institutional Lender/Investor who owns, holds, or controls a Leasehold Mortgage.

“Losses” shall mean all losses, costs, claims, damages, liabilities, expenses, or causes of action (including attorneys’ fees and court costs), whether direct or indirect, known or unknown, foreseen or unforeseen.

“Member” shall mean any Person with a direct ownership interest in Tenant.

“Modified Lease Option” shall have the meaning set forth in Section 3.6.

“Modified Lease Option Notice” shall have the meaning set forth in Section 3.6.1.

“Modified Lease Option Rent” shall have the meaning set forth in Section 3.6.3.

“Notice” shall have the meaning set forth in Section 15.10.

“Objectionable Exceptions” shall have the meaning set forth in Section 3.5.6(a).

“Original Appraisals” shall have the meaning set forth in Exhibit C.

“Original Appraiser” shall have the meaning set forth in Exhibit C.

“Parking Facility” shall mean the multistory parking garage that will primarily serve the Hospital, its patients, visitors, and staff, and others with business at the Hospital to be constructed on the Land in accordance with the Development Agreement.

“Participation Rent” shall have the meaning set forth in Section 4.2.

“Party(ies)” when used in the singular, shall mean either District or Tenant; when used in the plural, shall mean both District and Tenant.

“Permitted Assignment” shall have the meaning set forth in Section 10.2.1.

“Permitted Change of Control” shall have the meaning set forth in Section 10.2.2.

“Permitted Exceptions” shall have the meaning set forth in Section 3.5.4.

“Permitted Mortgage” shall mean a Leasehold Mortgage for which the documentation required under Section 13.3 has been submitted to District.

“Permitted Mortgagee” shall mean a Leasehold Mortgagee who owns, holds, or controls, or is the beneficiary under, a Permitted Mortgage.

“Permitted Transfer” shall have the meaning set forth in Section 10.2.

“Permitted Uses” shall mean with respect to the (a) Inpatient Hospital, the operation of the relevant Improvements as a “hospital, general” as defined in Title 22B, Chapter 20 of the District of Columbia Municipal Regulations, as such regulations are in effect as of the Execution Date, and as modified or amended from time to time, (b) Ambulatory Facility, the operation of the relevant Improvements as an “ambulatory care facility” or an “ambulatory surgical facility” as defined in Title 22B, Chapter 40 of the District of Columbia Municipal Regulations, as such regulations are in effect as of the Execution Date, and as modified or amended from time to time, and (c) the Parking Facility, the operation of the relevant Improvements as a parking garage that will primarily serve the Hospital, its patients, visitors, and staff, and others with business at the Hospital, and other ancillary uses typically provided in such facilities.

“Person” shall mean any individual, corporation, limited liability company, trust, partnership, association, or other entity.

“Personal Property Inventory” shall have the meaning set forth in Section 2.5.4.

“Prohibited Person” shall mean any of the following Persons: (a) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) conspiracy to commit a crime, (v) making false statements to a governmental agency, (vi) improperly influencing a governmental official, and (vii) extortion; or (b) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. § 4301 et seq., as amended; (y) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (z) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended; or (c) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of

the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above; or (e) any Person who could be debarred if the standards applied in Title 27, Section 2213 of the D.C. Municipal Regulations were applied to such Person's failure to satisfy a contractual obligation to the District of Columbia; or (f) any Person who is on the District of Columbia's list of debarred, suspended or ineligible Persons; or (g) any Affiliate of any of the Persons described in any one or more of clauses (a) through (f) above.

"Prohibited Uses" means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.

"Purchase Notice" shall have the meaning set forth in Section 3.5.1.

"Purchase Option" shall have the meaning set forth in Section 3.5.

"Purchase Price" shall have the meaning set forth in Section 3.5.

"Qualified Appraiser" shall mean an appraiser who and for a period of not less than the prior ten (10) years (i) is and has been a member in good standing of the Appraisal Institute (or any successor association or body of comparable standing if such Institute is not then in existence), and (ii) has experience as the principal appraiser of large hospitals or similar medical facilities in the Washington, D.C. metropolitan area.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment from the Land or the Improvements thereon (including the abandonment or discharge of barrels, containers, and other receptacles containing any Hazardous Materials).

"Renewal Works" means those activities required to be undertaken by Tenant as part of the Handover Process in order to meet the Handover Standards.

"Rent" shall mean, collectively, the Base Rent and the Additional Rent.

"Required Replacements" has the meaning set forth in Section 7.2.5.

"Significant Alteration" shall mean any Alteration (or series of related Alterations) that (i) changes or modifies the structural integrity of the then existing Improvements, (ii) changes the exterior design or the massing of the Improvements and costs in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), or (iii) changes the interior design of the Improvements and costs in excess of Twenty-Five Million Dollars (\$25,000,000.00) excluding the costs of any Tenant's Personal Property purchased and installed as part of such Significant

Alteration. The dollar limits contained in this definition shall be increased on an annual basis beginning on the first anniversary of the Execution Date to the same extent, if any, that the CPI increases.

“**Space Lease**” shall mean a sublease, license, permit, or concession agreement for the occupancy of a portion of the Improvements for the Permitted Uses.

“**Studies**” shall have the meaning set forth in Section 2.7.1.

“**Substantial Completion**” shall have the meaning given to such term in the Development Agreement.

“**Survey**” shall have the meaning set forth in Section 3.5.5.

“**Tenant**” shall have the meaning set forth in the Preamble.

“**Tenant’s Agents**” means Tenant’s agents, officers, directors, employees, consultants, contractors, subcontractors, and representatives.

“**Tenant’s Capital Improvements**” means (i) any personal property, furniture, technology hardware, or medical equipment purchased by Tenant using non-District funds which is affixed to the Improvements and shall remain with the Improvements at the expiration or termination of this Lease and (ii) any repairs, improvements, changes, replacements, Alterations, and other items made by Tenant to the Improvements or Land, which, under generally accepted accounting principles, consistently applied, the costs of which are properly classified as capital expenditures or capital improvements.

“**Tenant’s Personal Property**” shall have the meaning set forth in Section 2.5.3.

“**Termination Notice**” shall have the meaning set forth in Section 10.3.4.

“**Third Appraisal**” shall have the meaning set forth in Exhibit C.

“**Third Appraiser**” shall have the meaning set forth in Exhibit C.

“**Third Party Change of Control of UHS**” shall have the meaning set forth in Section 10.3.4.

“**Total Personal Property**” shall have the meaning set forth in Section 2.5.4.

“**Transfer**” means (i) any sale, assignment, conveyance, sublease (except Space Leases), or other transfer (whether voluntary, involuntary, or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing; (ii) any direct change of Control of, or any sale, assignment, or other transfer, or issuance, of any direct Equity Interest of Tenant; and (iii) any direct change of Control of, or any sale, assignment, or other transfer, or issuance, of any direct Equity Interest of a Member. Notwithstanding the foregoing, no sale, assignment, trust, or other transfer of shares or units in a publicly traded

corporation, partnership, or limited liability company or a real estate investment trust shall constitute a “Transfer” for purposes of this Lease.

“**Transferee**” means the purchaser, assignee, transferee, or sublessee as a result of a Transfer.

“**UHS**” shall have the meaning set forth in the Preamble.

ARTICLE 2 LEASE OF LEASED PREMISES

2.1. Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District, as of each Commencement Date, District grants, demises, and lets to Tenant, and Tenant takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises comprising the applicable Component(s) to have and to hold for and during the Lease Term.

2.2. Use.

2.2.1 *Continuous Legal Use.* Throughout the Lease Term, Tenant shall continuously use and operate the Leased Premises as required by the terms of this Lease and, for so long as it is in effect, the Hospital Operations Agreement. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to all or any portion of the Leased Premises in connection with Alterations, repairs, or renovation related to a Casualty Restoration, a condemnation, or maintenance work (to the extent such closure or restricted access is required to effect any such work), in each case undertaken in accordance with the provisions of this Lease.

2.2.2 *Permitted Uses.* Tenant shall use and operate the Leased Premises for the Permitted Uses and in accordance with the terms and conditions of this Lease and, for so long as it is in effect, the Hospital Operations Agreement. No other uses shall be permitted during the Lease Term without District’s prior written approval, in its sole and absolute discretion.

2.3. Prohibited Uses.

2.3.1 *Prohibited Uses.* Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any part thereof to be used or occupied, for any of the following (“**Prohibited Uses**”):

- (a) for any unlawful or illegal business, use, or purpose;
- (b) any illegal gambling;
- (c) for any use which is a public nuisance;
- (d) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises; or

(e) any use inconsistent with Section 2.2.

2.3.2 *Discontinuance*. Promptly upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees, or concessionaires.

2.4. Quiet Enjoyment. Except during the continuance of an Event of Default, during the Lease Term, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person.

2.5. Title to Improvements and Personal Property.

2.5.1 *Improvements*. During the Lease Term, except to the extent the Purchase Option is exercised, the Improvements, including all additions, alterations, and improvements thereto or replacements thereof, and all appurtenant fixtures, machinery, and equipment installed therein shall be the property of District; provided, however, subject to District's right to purchase Tenant's Personal Property as set forth in Section 2.5.4, Tenant's Personal Property shall not be the property of District, shall not be considered a part of the Improvements, and Tenant's Personal Property may be removed by Tenant from the Leased Premises at any time. In addition, during the Lease Term, Tenant shall be deemed the owner of the Tenant's Capital Improvements, subject to the terms of this Lease. At the request of District, Tenant shall execute a quitclaim bill of sale as to the Improvements, excluding Tenant's Personal Property that is removed by Tenant on or before the end of the Lease Term (including completion of the Handover Process), and Tenant's Capital Improvements confirming District's ownership in the Improvements at the end of the Lease Term.

2.5.2 *Reversion of Improvements*. Notwithstanding the exercise of the Purchase Option, at the expiration or earlier termination of this Lease, the Improvements and all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein shall revert and become the property of District upon the termination of the Lease; excluding Tenant's Personal Property which shall remain Tenant's personal property, subject to District's right to purchase Tenant's Personal Property in accordance with Section 2.5.4. In the event Tenant fails to remove any Tenant's Personal Property on or before the end of the Lease Term (including completion of the Handover Process), any such Tenant's Personal Property shall become the property of District regardless of whether District exercised its right to purchase such Tenant's Personal Property.

2.5.3 *Personal Property*. Any personal property, supplies, inventory, furniture, technology hardware, or medical equipment purchased or leased by Tenant using non-District funds which is not affixed to the Improvements, or if affixed, can be removed by Tenant without damage to the Improvements, or with the repair by Tenant of any such damage to the Improvements (collectively, "**Tenant's Personal Property**") is and shall remain the property of Tenant. Notwithstanding anything to the contrary contained in this Lease, the term "Tenant's Personal Property" shall not include any electrical, anti-pollution, heating, lighting (including hanging fluorescent lighting), incinerating, power, air cooling, air conditioning, humidification,

sprinkling, plumbing, lifting, cleaning, fire prevention, fire extinguishing, ventilating, and any other building systems, and all engines, pipes, pumps, tanks (including exchange tanks and fuel storage tanks), motors, conduits, ducts, steam circulation coils, blowers, steam lines, compressors, oil burners, boilers, back-up generators, cooling towers and waste water treatment equipment, that are permanently affixed to the Improvements or the Land, and all components of the security system (including vehicles). Any personal property, supplies, inventory, furniture, technology hardware, or medical equipment purchased or leased using District funds is and shall remain the property of District (collectively, “**District’s Personal Property**”).

2.5.4 *Disposition of Personal Property.* Prior to the expiration or earlier termination of this Lease, Tenant shall provide District with an inventory (the “**Personal Property Inventory**”) that identifies: (1) all personal property, supplies, inventory, furniture, technology hardware, or medical equipment then located in the Improvements (“**Total Personal Property**”), including whether each item of Total Personal Property is Tenant’s Personal Property or District’s Personal Property; (2) for any Tenant’s Personal Property purchased by Tenant, (i) documentation evidencing the purchase by Tenant of, and the amount paid by Tenant to purchase, each such item of Tenant’s Personal Property identified in the Personal Property Inventory, (ii) the current depreciated value of each item of Tenant’s Personal Property identified in the Personal Property Inventory, and (iii) if the Tenant’s Personal Property replaced District’s Personal Property, then the amount received, if any, by Tenant in disposing of District’s Personal Property; and (3) for any Total Personal Property leased by Tenant, a copy of the lease and any supporting documentation evidencing the Tenant’s lease of such item of Total Personal Property identified on the Personal Property Inventory. Prior to removal from the Improvements at the expiration or earlier termination of this Lease, Tenant shall offer to District (a) the right to purchase all of Tenant’s Personal Property purchased by Tenant for the current depreciated value of such Tenant’s Personal Property as set forth in the Personal Property Inventory (as may be adjusted, if applicable, by subtracting the amount received, if any, by Tenant in disposing of District’s Personal Property if the applicable Tenant’s Personal Property replaced any such District’s Personal Property) and (b) the right to assume the leases for any Total Personal Property leased by Tenant. If District elects to purchase any Tenant Personal Property purchased by Tenant, District shall notify Tenant of the same in writing prior to the expiration or earlier termination of this Lease and Tenant shall sell to District in place such Tenant’s Personal Property at the expiration or earlier termination of this Lease in exchange for payment by District to Tenant of the applicable purchase price in immediately available funds. If District elects to assume any lease for the Total Personal Property leased by Tenant, District shall notify Tenant of the same in writing prior to the expiration or earlier termination of this Lease, and Tenant shall assign to District, and provide District with evidence of such assignment, such Total Personal Property at the expiration or earlier termination of this Lease. At the request of District, Tenant shall execute a bill of sale conveying to District the Tenant’s Personal Property purchased by District as provided in this Section in exchange for payment of the applicable purchase price to Tenant in immediately available funds.

2.5.5 *Survival.* Tenant’s obligations under this Section 2.5 shall survive the expiration or earlier termination of the Lease.

2.6. Easements; District Access. Any conveyance or grant of an easement upon the Leasehold Estate shall be subject to District approval, which shall not be unreasonably withheld, conditioned or delayed. District retains the right to access the Leased Premises during the Lease Term to inspect the Leased Premises for Hazardous Materials and to undertake the remediation of Hazardous Materials in accordance with the terms of this Lease.

2.7. “As Is, Where Is” Lease.

2.7.1 *Inspections and Studies.* Tenant hereby acknowledges that, prior to each Commencement Date, it has had the right to perform all physical surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (collectively, “**Studies**”) as Tenant has deemed necessary or desirable to evaluate the applicable portion of the Leased Premises and the ability to use the same for its intended purposes (including the operation of the same in accordance with this Lease and all Applicable Laws), using experts of its own choosing and to otherwise access the Leased Premises for the purposes of performing such Studies. Tenant has been provided and availed itself of the opportunity to inspect and investigate the environmental condition of the Leased Premises. In addition, Tenant has received and reviewed the environmental reports identified in Exhibit E of the Agreement.

2.7.2 *DISCLAIMERS.* EXCEPT AS EXPLICITLY SET FORTH IN THIS LEASE, DISTRICT IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PREMISES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE LEASED PREMISES WITH LAWS, THE TRUTH, ACCURACY, OR COMPLETENESS OF ANY DOCUMENTS OR OTHER INFORMATION PERTAINING TO THE LEASED PREMISES, THE STATUS OF ANY LITIGATION OR OTHER MATTER, OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF DISTRICT TO TENANT, OR ANY OTHER MATTER OR THING REGARDING THE LEASED PREMISES. TENANT ACKNOWLEDGES AND AGREES TENANT SHALL ACCEPT THE LEASED PREMISES, “AS IS, WHERE IS, WITH ALL FAULTS.” TENANT HAS NOT RELIED AND WILL NOT RELY ON, AND DISTRICT IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE LEASED PREMISES OR RELATING THERETO MADE OR FURNISHED BY DISTRICT OR ANY AGENT REPRESENTING OR PURPORTING TO REPRESENT DISTRICT, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. TENANT REPRESENTS TO DISTRICT THAT TENANT HAS HAD THE OPPORTUNITY TO, AND/OR HAS CONDUCTED, SUCH INVESTIGATIONS OF THE LEASED PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS TENANT DEEMS NECESSARY TO

SATISFY ITSELF AS TO THE CONDITION OF THE LEASED PREMISES AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE LEASED PREMISES, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF DISTRICT OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. TENANT SHALL ASSUME THE RISK THAT ADVERSE MATTERS MAY NOT HAVE BEEN REVEALED BY TENANT'S INVESTIGATIONS, AND TENANT SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED DISTRICT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH MIGHT HAVE ASSERTED OR ALLEGED AGAINST DISTRICT AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE LEASED PREMISES. SUBJECT TO THE EXCLUSIONS IN SECTION 5.1.2, TENANT AGREES THAT SHOULD ANY CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS MATERIALS OR OTHER ENVIRONMENTAL CONDITIONS IN THE LEASED PREMISES BE REQUIRED, SUCH CLEAN-UP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF TENANT.

ARTICLE 3 TERM

3.1. Term of Lease.

3.1.1 *Commencement Date.* The Parties acknowledge that, because the construction of the Components will be phased, the delivery of the Components for occupancy to the Tenant will be phased and thus, the day on which this Lease commences for the entirety of the Leased Premises will be phased. For purposes of this Lease, the “**Commencement Date**” shall mean the date the Improvements and portion of the Land comprising a Component is available for occupancy by Tenant. The Commencement Date for a Component is the date that a Certificate of Substantial Completion is issued for such Component in accordance with the Development Agreement. The Parties shall execute an acknowledgement in the form attached hereto as Exhibit K confirming the Commencement Date and the portion of the Land and Improvements included for each Component within thirty (30) days after issuance of the applicable Certificate of Substantial Completion.

3.1.2 *Lease Term.* The term of this Lease (the “**Lease Term**”) as to each Component shall commence on the applicable Component's Commencement Date and shall continue until the earlier of (i) 11:59 p.m., Washington, DC time, on the Expiration Date, or (ii)

the effective time of a termination in accordance with Section 3.2. On each Commencement Date, District shall deliver possession of the applicable portion of the Leased Premises to Tenant.

3.2. Early Termination. The Lease Term shall terminate prior to the Expiration Date upon the occurrence of (i) the written agreement of the Parties to terminate this Lease, (ii) the termination of this Lease in accordance with District's rights under Section 3.2.3, Section 9.2.2, or as otherwise provided in this Lease, (iii) Tenant's delivery of the Early Termination Payment to District in accordance with Section 3.2.1, (iv) the occurrence of the event described in Section 3.2.2, (v) the termination of this Lease as otherwise provided in this Lease, or (vi) the termination of the Hospital Operations Agreement by Tenant following a Material Breach (as such term is defined in the Hospital Operations Agreement) by District, pursuant to Section 9.2.1 of the Hospital Operations Agreement.

3.2.1 *Tenant's Option to Terminate*. Commencing on the date that is eight (8) years and six (6) months after the Commencement Date for the Component comprising the Inpatient Hospital, Tenant shall have the right, by the provision of at least eighteen (18) months' prior Notice to District, to terminate this Lease in exchange for making the applicable payment to District set forth in Exhibit F for the applicable year in which the termination will be effective (the "**Early Termination Payment**"). In the event Tenant elects to exercise this option, Tenant shall wind-down operations in accordance with the Handover Process.

3.2.2 *Termination of Development Agreement*. In the event the Development Agreement terminates in accordance with the terms therein prior to the issuance of a Certificate of Substantial Completion for the last Component, this Lease shall automatically terminate as of (i) if a Certificate of Substantial Completion has not been issued for any Component, the date that the Development Agreement terminates, or (ii) if a Certificate of Substantial Completion has been issued for a Component (other than the Inpatient Hospital), upon completion of the Handover Process for such Component.

3.2.3 *Failure to Issue Certificate of Substantial Completion*. In the event that any Certificate of Substantial Completion is not issued within the time set forth in the Development Agreement, District, in its sole and absolute discretion, and without any liability, may terminate this Lease by providing Notice to Tenant. Such Notice shall set forth the effective date of the termination.

3.3. Return of Leased Premises and Handover Standards.

3.3.1 *Peaceably Surrender*. Upon the Expiration Date or in the event of earlier termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises and all Improvements, including any Tenant's Personal Property that is purchased by District in accordance with Section 2.5.4, to District in accordance with the Handover Process and the Improvements shall be delivered to District (or such third party designated by District in its sole discretion).

3.3.2 *District Rights.* If the Lease Term is expiring, beginning twenty-four (24) months prior to the Expiration Date, District shall have the right during the remainder of the Lease Term (i) to advertise, at its sole cost and expense, the availability of the Leased Premises for re-letting at the end of the Lease Term, (ii) to erect upon the Leased Premises signs indicating such availability (provided that such signs do not unreasonably interfere with the use of the Leased Premises by Tenant), and (iii) to show the Leased Premises to prospective purchasers or tenants during normal business hours upon reasonable Notice to Tenant, provided that such actions do not unreasonably interfere with the use of the Leased Premises by Tenant.

3.3.3 *Handover Standards.* Prior to the Expiration Date, Tenant is required to deliver the Improvements, including any Tenant's Personal Property that is purchased by District in accordance with Section 2.5.4, to District (or such third party designated by District in its sole discretion) in a condition consistent with the Handover Standards, which may require Tenant's undertaking of Renewal Works, at Tenant's expense, to meet the Handover Standards, in accordance with the terms of this Lease.

3.3.4 *Handover Process.* Beginning eighteen (18) months prior to the Expiration Date (or such other date that is reasonable prior to the Expiration Date if the Lease is terminated pursuant to Section 3.2), the Parties shall follow the process set forth in the Handover Process with respect to evaluating whether the Improvements meet the Handover Standards, the undertaking of Renewal Works by Tenant, and the transfer of operation of the Improvements, including any Tenant's Personal Property that is purchased by District in accordance with Section 2.5.4, to District or a third party designated by District in its sole discretion.

3.4. Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after the Expiration Date, Tenant or such Person shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Base Rent in an annual amount equal to one hundred and fifty percent (150%) of the fair market rental value for the Leased Premises as determined by an appraisal conducted by District based upon the highest and best use of the Leased Premises. Tenant shall pay as Additional Rent any costs and expenses of an appraisal incurred by District in connection with this Section 3.4 payable upon presentation of demand and evidence of costs. If the retention of possession of the Leased Premises is with the written consent of District, which consent shall be in District's sole and absolute discretion, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by District of any re-entry rights or remedies of District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days' notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or an Event of Default, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease

Term, District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

3.5. Purchase Option. Beginning on the tenth (10th) anniversary of the Commencement Date for the Component comprising the Inpatient Hospital, and provided (i) there is no Event of Default under this Lease or an event occurring for which there was a provision of Notice that would give rise to an Event of Default under this Lease and (ii) there is no event then occurring which would give rise to a right for District to terminate the Hospital Operations Agreement under Section 9.2 of the Hospital Operations Agreement, Tenant shall have the right to purchase the Improvements from District (the “**Purchase Option**”) for an amount equal to the greater of (i) the fair market value of the Improvements as determined by an Appraisal, less the depreciated value of Tenant’s Capital Improvements, or (ii) the amount necessary to defease the Bonds (such greater amount, the “**Purchase Price**”).

3.5.1 *Purchase Process*.

(a) To commence the process for the exercise of the Purchase Option, Tenant shall provide a Notice to District identifying its interest in exercising the Purchase Option and requesting an Appraisal.

(b) Tenant shall request and, within thirty (30) days of providing the Notice described in Section 3.5.1(a), deliver to District the Commitment in accordance with Section 3.5.5.

(c) Within thirty (30) days of receipt of the Notice described in Section 3.5.1(a), District shall provide a Notice to Tenant identifying the amount of the payment required to defease the Bonds.

(d) Within thirty (30) days after determination of the Appraised Value of the Improvements and the fair market rent for the Land in accordance with Exhibit C, Tenant, at its option, may submit a Notice to District (the “**Purchase Notice**”) expressing Tenant’s intent to purchase the Improvements at the Purchase Price determined in accordance with Section 3.5.

3.5.2 *Effectiveness*. The Purchase Option shall be exercised and deemed closed upon completion of the following: (i) Tenant’s payment to District of the Purchase Price; (ii) District’s execution and delivery of a bill of sale conveying the Improvements to Tenant; and (iii) the Parties’ execution and delivery of an amendment to this Lease which (a) removes the Improvements from the Leased Premises, (b) extends the Expiration Date to ninety-nine (99) years after the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued, (c) amends Base Rent to be equal to the fair market rent of the Land, as determined by Appraisal, subject to an annual adjustment determined in accordance with Exhibit C, and (d) acknowledges the termination of the Hospital Operations Agreement and the Participation Rent. Each of the Parties shall take the required actions within ninety (90) days after receipt of the Purchase Notice.

3.5.3 *Compliance.* In the event the Purchase Option is exercised, Tenant shall comply with the terms and conditions set forth in Exhibit I for the remainder of the Lease Term.

3.5.4 *Permitted Exceptions.* District's conveyance of title to the Improvements to Tenant in accordance with this Section 3.5 shall be free and clear of any and all liens, encumbrances, and exceptions of any kind or nature whatsoever except the following (the "**Permitted Exceptions**"): (1) this Lease; (2) easements, restrictions, and encumbrances of record (a) created on or before the Execution Date and (b) created after the Execution Date and which do not impair the marketability of title to the Improvements or which Tenant agrees to assume or take title subject to; (3) Space Leases; (4) all acts done, caused, or suffered by, through, or under Tenant; and (5) any exceptions or matters waived by Tenant in accordance with Section 3.5.6.

3.5.5 *Title Commitment and Survey.* Within thirty (30) days of providing the Notice set forth in Section 3.5.1(a), Tenant may obtain and deliver to District: (1) a commitment for an ALTA owner's policy of title insurance (the "**Commitment**") which shall have attached thereto copies of all instruments noted therein as exceptions to title, and which shall be endorsed to and including the date of closing, insuring title to the Improvements, subject only to the Permitted Exceptions, and with such endorsements (which endorsements will be at Tenant's sole expense) as may be reasonably required by Tenant; and (2) a minimum standard detail requirements for ALTA/ACSM land title surveys of the Land and the Improvements (the "**Survey**"), prepared by a land surveyor licensed and registered in the District of Columbia and reasonably satisfactory to Tenant.

3.5.6 *Exceptions.*

(a) Within ten (10) Business Days after receipt of the Commitment, the documents listed therein as exceptions, and the Survey, Tenant shall give District Notice of any exceptions enumerated in the Commitment and/or any matters shown on the Survey which are not Permitted Exceptions and are reasonably unacceptable to Tenant (the "**Objectionable Exceptions**").

(b) Within twenty (20) Business Days after receipt of the Notice described in Section 3.5.6(a), District shall respond to Tenant in writing identifying, with respect to each Objectionable Exception, whether (1) District considers the Objectionable Exception to be a Permitted Exception; (2) District will take reasonable efforts to remove the Objectionable Exception prior to closing; or (3) the Objectionable Exception shall be accounted in the value of the Improvements under the Appraisal in accordance with Exhibit C. If District fails to respond to Tenant within such twenty (20) Business Day period, then District shall be deemed to have selected alternative (1) above.

(c) Tenant shall then have a period of five (5) Business Days from and after its receipt of the Notice described in Section 3.5.6(b) to inform District whether Tenant elects (1) to terminate the Purchase Option; (2) that District should proceed to use reasonable efforts to remove the Objectionable Exception if District indicated it would do so in District's Notice; (3) amend the Appraisal instructions if District agreed to do so in District's Notice; or (4) waive any

Objectionable Exceptions and proceed to closing. If Tenant fails to respond within such five (5) Business Day period, the Purchase Option contemplated herein shall be deemed to be terminated, and District shall have no obligation to use reasonable efforts to remove the Objectionable Exception.

(d) In the event Tenant does not (i) obtain a Commitment and Survey in accordance with Section 3.5.5 or (ii) provide District Notice of the Objectionable Exceptions in accordance with Section 3.5.6(a), then Tenant shall be deemed to have waived any exceptions or matters of title.

3.5.7 *Costs.* Any cost and expense of the Commitment and the title insurance policy issued pursuant thereto, and of the Survey shall be paid by Tenant. Any transfer taxes, recordation taxes, recording fees and documentary stamp taxes (including any surtax), and closing costs of Tenant shall be paid by Tenant. In no event shall District be responsible for any closing costs.

3.5.8 *Duty of Cooperation.* In the event Tenant elects to exercise the Purchase Option hereunder, District shall reasonably cooperate with Tenant in any application to the District of Columbia State Health Planning and Development Agency, District of Columbia Office of Attorney General, any successors thereto, or any other District of Columbia agency for any regulatory approvals necessary to effect such Purchase Option.

3.6. Modified Lease Option. Beginning on the tenth (10th) anniversary of the Commencement Date for the Component comprising the Inpatient Hospital, and provided (i) there is no Event of Default under this Lease or an event occurring for which there was a provision of Notice that would give rise to an Event of Default under this Lease and (ii) there is no event occurring which would give rise to a right to terminate the Hospital Operations Agreement under Section 9.2 of the Hospital Operations Agreement, Tenant shall have the right to request the termination of the Hospital Operations Agreement (the “**Modified Lease Option**”) in accordance with this Section.

3.6.1 *Modified Lease Option Notice.* In the event Tenant wishes to exercise the Modified Lease Option, Tenant shall provide a Notice to District identifying its interest in exercising the Modified Lease Option and initiating the determination of the Appraised Value in accordance with Exhibit C for the fair market rent of the Leased Premises for the remainder of the Lease Term. Within thirty (30) days after determination of the Appraised Value in accordance with Exhibit C, Tenant, at its option, may submit a Notice to District (the “**Modified Lease Option Notice**”) expressing Tenant’s intent to terminate the Hospital Operations Agreement.

3.6.2 *Modified Lease Option.* Within ninety (90) days after receipt of the Modified Lease Option Notice, the Parties shall execute an amendment to this Lease which: (i) acknowledges the termination of the Hospital Operations Agreement and the Participation Rent, (ii) amends the Base Rent to be equal, on an annual basis, to the applicable Modified Lease Option Rent (as defined below), and (iii) requires Tenant to comply with the terms and conditions set forth in Exhibit I.

3.6.3 *Modified Lease Option Rent.* Modified Lease Option Rent shall be equal to the following amounts (as applicable, the “**Modified Lease Option Rent**”):

(a) For such time as there are outstanding Bonds, the Modified Lease Option Rent shall be equal to the higher of (x) the annual debt service due by District on the Bonds or (y) the fair market rent of the Leased Premises as set forth in the Modified Lease Option Notice, subject to an annual adjustment determined in accordance with Exhibit C; and

(b) For such time that the Bonds have been defeased or paid in full, and for the duration of the Lease Term, the Modified Lease Option Rent shall be equal to the fair market rent of the Leased Premises as set forth in the Modified Lease Option Notice subject to an annual adjustment determined in accordance with Exhibit C.

ARTICLE 4 RENT, IMPOSITIONS, AND GUARANTY

4.1. Base Rent. Tenant shall pay to District rent equal to one dollar (\$1.00) per year (the “**Base Rent**”), unless modified pursuant to Section 3.5.2 or Section 3.6.2. Base Rent for the Lease Term shall be due and payable as one lump sum payment of Seventy-Five Dollars (\$75.00) on or before the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued, except that the payment of Base Rent following Tenant's exercise of its Purchase Option or Modified Lease Option shall be governed by the terms of the amendment(s) to be executed to effect such option(s). The Base Rent is not subject to proration or refund in the event of the early termination of this Lease or Tenant's exercise of either its Purchase Option or Modified Lease Option.

4.2. Participation Rent. Tenant shall pay to District rent equal to the amount set forth in Exhibit D (the “**Participation Rent**”), in the event the metrics set forth in Exhibit D are achieved, on or before the first (1st) day of _____¹ of each year. If Tenant exercises the Purchase Option or the Modified Lease Option, then Tenant shall not be obligated to pay Participation Rent after the exercise of the Purchase Option or the Modified Lease Option, as applicable.

4.3. Additional Rent. From and after the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued, and throughout the Lease Term, Tenant shall also pay as additional rent all sums, costs, expenses, and other payments payable or dischargeable by Tenant under this Lease, including, without limitation, all Impositions and any Participation Rent (“**Additional Rent**”). The term Additional Rent excludes Base Rent.

4.4. No Offsets or Deductions. This Lease shall be deemed and construed to be a “net lease” and Tenant shall pay all payments of Rent, absolutely net throughout the Lease Term, free of any charges, assessments, impositions, costs, or deductions of any kind and without any demand, offset, abatement, notice, deduction, counter-claim, or set-off except as specifically set

¹ Tenant should insert the month that is three months after the end of Tenant’s fiscal year.

forth in this Lease. All costs, fees, interest, charges, expenses, and other obligations of every kind and nature whatsoever relating to the Leased Premises or the Improvements which accrue during the Lease Term which are payable by Tenant as set forth in this Lease shall be paid or discharged by Tenant. Tenant's covenants to pay the Rent are independent covenants. No happening, event, occurrence, or situation whatsoever during the Lease Term, whether foreseen or unforeseen, and however extraordinary, shall permit Tenant to quit or surrender the Leased Premises or this Lease or shall relieve Tenant from its liability to pay Rent, or relieve Tenant from any of its other obligations under this Lease, unless otherwise specifically provided for in this Lease.

4.5. Manner of Payment. Except as provided in Section 4.7, Rent and all other amounts payable by Tenant under this Lease to District, including, without limitation the Purchase Price upon Tenant's exercise of the Purchase Option, shall be paid in legal tender of the United States of America by, at the election of District, with reasonable prior Notice to Tenant, wire transfer or check drawn on a United States bank (subject to collection), to District pursuant to the instructions set forth in Exhibit G or at such other address as District may designate from time to time by at least fifteen (15) days' advance Notice to Tenant. District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall not excuse a delay in payment by Tenant on a subsequent occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and other Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.6. Late Charge. If Tenant fails to make any payment of Rent within ten (10) days after the date such payment is due and payable, then District shall have the right to impose upon Tenant a late charge of five percent (5%) of the amount of such payment. Any payment due to District hereunder which is not made when due shall bear interest from the date due to the date paid at the Default Rate.

4.7. Payment of Impositions.

4.7.1 *Obligation to Pay Impositions*. From and after the applicable Commencement Date and during the Lease Term, Tenant shall pay, in the manner provided in Section 4.7.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant or the Land, the Improvements, or the Leased Premises to which possession has been delivered to Tenant in accordance with Section 3.1 with respect to (i) the Land, (ii) Leased Premises, (iii) the Improvements, (iv) any vault, passageway, or space in, over, or under any sidewalk or street in front of or adjoining the Leased Premises, (v) any other appurtenances of the Leased Premises, or any personal property or other facility used in the operation thereof, (vi) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, (vii) the use and occupancy of the Leased Premises, or (viii) the activities and/or the transactions contemplated by this Lease. All payments of Impositions shall be prorated for any portion of a tax year at the beginning or end of the Lease Term.

4.7.2 *Payment of Impositions*. During the Lease Term, Tenant shall arrange to be separately billed for, and shall pay, the Impositions to the applicable Governmental Authority

assessing or imposing such Imposition. During the Lease Term, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments that are due during the Lease Term with interest, if any. The Parties contemplate that a tax lot designation for the Leased Premises separate and apart from a larger tax or other assessment parcel will be created prior to the Execution Date; however, if a separate tax lot designation has not been created for the Leased Premises, District and Tenant shall promptly after the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued, and as required from time to time thereafter, make application to the appropriate Governmental Authorities for such designation as a separate tax lot and shall cooperate with one another in endeavoring to obtain and maintain such designation. During any period in which all or any part of the Land or Leased Premises is part of a larger tax or other assessment parcel, the Impositions therefor shall be allocated to and payable by Tenant on a reasonable pro rata basis, as jointly determined by District and Tenant.

4.7.3 *Evidence of Payment.* Tenant shall furnish to District, within thirty (30) days after the date of District's written request therefor, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the applicable Imposition.

4.7.4 *Evidence of Non-Payment.* Any certificate, advice, or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice, or bill, at the time or date stated therein. At District's written request therefor, Tenant shall promptly deliver to District a receipt and copy of any such certificate, advice, or bill received by Tenant.

4.7.5 *Survival.* The provisions of this Section 4.7 shall survive the expiration of the Lease Term, until any Imposition that may be payable by Tenant under this Section 4.7 has been paid in full.

4.7.6 *Contest of Impositions.* Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, to the extent permitted by Applicable Law, if, and only as long as: (i) such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies District in writing of any such contest and (ii) neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of District, in danger of being forfeited to a Governmental Authority. Upon request by Tenant, District shall execute, as fee owner, such papers as may from time to time be necessary to bring, defend, or facilitate such proceedings, to the extent

required as a condition to such contest by the applicable Governmental Authority imposing such Imposition, provided that District shall not be subject to any out-of-pocket cost or liability as a result thereof.

4.8. Guaranty. On the Execution Date, Tenant shall cause the Guarantor to execute a Guaranty in substantially the form of Exhibit H. The Guarantor shall not be relieved of its obligations under the Guaranty unless a replacement Guaranty is provided by a new Guarantor proposed by Tenant which new Guarantor shall be subject to approval by District in its sole and absolute discretion.

ARTICLE 5 APPLICABLE LAW

5.1. Compliance with Applicable Law. During the Lease Term, Tenant shall comply with all Applicable Laws (including, without limitation, Health Care Laws and Environmental Laws). Without limiting the generality of the foregoing:

5.1.1 *Compliance*. Tenant shall maintain and comply with all permits, licenses, Approvals, and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance, and repair of the Leased Premises or any part thereof, including, but not limited, to all necessary licenses, permits, authorizations, certifications, consents, and approvals necessary to operate (a) the Inpatient Hospital as a General Hospital and the Ambulatory Facility in accordance with the Permitted Uses, including, without limitation, certification to participate in the Medicare and Medicaid or any other federal or District health care benefit program, (collectively, the “**Hospital Licenses**”), and (b) the Parking Facility consistent with industry standards (the “**Parking Licenses**”).

5.1.2 *Hazardous Materials*. Neither Tenant nor any of Tenant’s Agents shall use, handle, store, generate, manufacture, transport, discharge, or Release any Hazardous Materials in, on, or under the Leased Premises, except in compliance with Applicable Law. Tenant shall promptly notify District, and provide copies promptly after receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to non-compliance with Applicable Law at the Leased Premises or the use, storage, handling, transportation, disposal, or Release of Hazardous Materials in, on, or under the Leased Premises by Tenant or Tenant’s Agents relating to non-compliance with Applicable Law; provided, however, that District’s receipt of any of the foregoing shall in no way create or impose any duty or obligation upon District to respond thereto. To the extent required by Applicable Law, Tenant shall, at its sole cost and subject in all respects to the prior written notification to District thereof, promptly clean up, remove, and otherwise fully remediate, in compliance with all Applicable Law, any Hazardous Materials situated in, on, or under the Leased Premises to the extent such Hazardous Materials are brought to the Leased Premises by Tenant or the Release of Hazardous Materials is caused by Tenant. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be responsible for the clean-up, removal, or remediation of any Hazardous Materials existing on the Leased Premises (i) as of the Execution Date, (ii) due to the acts or omissions of District, or any of its

employees, agents, contractors, or its tenants or licensees (other than Tenant, its Members, or Affiliates), or (iii) originating from off of the Leased Premises, except to the extent such Release of Hazardous Materials off of the Leased Premises is caused by Tenant or Tenant's Agents.

5.1.3 *District Rights.* If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal, or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by District in connection therewith shall be paid by Tenant. If District elects to cause the necessary cleanup, removal, or other remedial work to be performed as provided above for which Tenant is responsible under the terms of this Lease, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and for damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work; provided that District shall use reasonable efforts to the extent practicable to not interfere with Tenant's use and operation of the Leased Premises. Tenant's obligations under this Section 5.1.3 shall survive the expiration or earlier termination of the Lease.

5.1.4 *Tenant Obligations.* Upon the expiration or earlier termination of this Lease or Tenant's vacation of the Leased Premises, to the extent that Tenant is required to do so pursuant to the terms of Section 5.1.2, Tenant shall, at District's option and at Tenant's sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Law, all Hazardous Materials located on or in the Leased Premises (including, without limitation, the performance of any necessary investigatory, monitoring, cleanup, removal, or other remedial work), all of which remediation shall be subject to the prior written notification to District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article 9 of this Lease, District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal, or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by District, in connection therewith, plus interest at the Default Rate from the date incurred by District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations under this Section 5.1.4 shall survive the expiration or earlier termination of the Lease.

5.2. Right to Contest. Tenant shall have the right, after prior Notice to District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Law affecting the Leased Premises. Upon request by Tenant, District shall execute such papers, as fee owner, as may from time to time be necessary for Tenant to bring, defend, or facilitate such proceedings, to the extent required as a condition to such contest, provided that District shall not be subject to any out of pocket cost or additional liability as a result thereof. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject

District or Tenant to any liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect, and hold District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

5.3. Nondiscrimination Covenants.

5.3.1 *Covenant not to Discriminate in Sales or Rentals.* Tenant shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the Leased Premises.

5.3.2 *Covenant not to Discriminate in Employment.* Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Tenant agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the operation of the Leased Premises, including the D.C. Human Rights Act and its prohibitions on sexual harassment consistent with 4 DCMR 1000, *et seq.*

5.3.3 *Affirmative Action.* Tenant will take affirmative action to ensure that employees are treated in accordance with Applicable Law during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap as and to the extent provided by Applicable Law. Such affirmative action by Tenant shall include, but not be limited to, the following: (a) employment, upgrading, or transfer; (b) recruitment or recruitment advertising; (c) demotion, layoff, or termination; (d) rates of pay or other forms of compensation; and (e) selection for training and apprenticeship. Tenant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this nondiscrimination clause. Tenant may satisfy the requirements of this paragraph by completing the standard equal employment opportunity forms provided by the District of Columbia Office of Human Rights and complying on an ongoing basis with any commitments and certifications made in those forms.

5.3.4 *Solicitations for Employment.* Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

5.3.5 *Enforcement.* In the event of Tenant's noncompliance with the nondiscrimination covenants of this Section 5.3 or with any applicable rule, regulation, or order, District may take such enforcement against Tenant as may be provided by Applicable Law.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1. District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, District represents and warrants to Tenant, as of the Execution Date and, unless Tenant is notified in writing by District, affirmed as of the Commencement Date for each Component, as follows:

(a) District has all requisite right, power, and authority to enter into, execute, and deliver this Lease and to perform its obligations hereunder.

(b) No agent, broker, or other Person is entitled, or shall become entitled, to any commission or finder's fee in connection with this Lease, based upon arrangements made by District or on District's behalf.

(c) This Lease has been duly executed and delivered by District and, when duly executed and delivered by Tenant, shall constitute a legal, valid, and binding obligation of District enforceable against District in accordance with its terms.

(d) The execution, delivery, and performance of this Lease by District does not violate any of the terms, conditions, or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority or Applicable Law to which District is subject, or any agreement or contract to which District is a party or otherwise subject.

(e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to District's knowledge, threatened in writing against District involving the Leased Premises or that, if decided adversely to District, would impair District's ability to perform its obligations under this Lease.

6.2. Tenant's Representations and Warranties. As an inducement to District to enter into this Lease, Tenant represents and warrants to District, as of the Execution Date and, unless District is notified in writing by Tenant, affirmed as of the Commencement Date for each Component, as follows:

(a) Tenant is a limited liability company duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in the District of Columbia. True, correct, and complete copies of the articles of organization of Tenant have been certified and delivered to District on or before the Execution Date.

(b) Tenant has the right, power, and authority to enter into, execute, and deliver this Lease and to perform its obligations hereunder.

(c) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by District, shall constitute a legal, valid, and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(d) The execution, delivery, and performance of this Lease does not violate any of the terms, conditions, or provisions of (i) Tenant's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or any Applicable Law to which Tenant is subject, or (iii) any agreement or contract to which Tenant is a party or is otherwise subject.

(e) The lease of the Leased Premises by Tenant and Tenant's other undertakings pursuant to this Lease are and will be used for the purpose of operating the Improvements, and not for speculation in land holding or any other purpose.

(f) No action, consent, or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(g) No broker, finder, investment banker, or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant's behalf.

(h) Neither Tenant nor any of its Members, nor the constituent Members of any of its Members, are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

(i) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(j) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members: (i) would impair Tenant's ability to enter into and perform its obligations under this Lease; (ii) would materially adversely affect the financial condition or operations of Tenant or its Members; or (iii) threaten the legal existence of Tenant.

ARTICLE 7

TENANT COVENANTS; MAINTENANCE AND REPAIR; UTILITIES

7.1. Tenant's Affirmative Covenants Specified. Throughout the Lease Term and at the sole cost and expense of Tenant, Tenant covenants to:

(a) preserve and keep in full force and effect its existence, franchise, and rights and privileges under (i) the laws of the District of Columbia so as to have and retain the right to lease the Leased Premises, operate the Improvements, and transact business in the District of Columbia and (ii) the laws of the jurisdiction in which Tenant is organized;

(b) use and occupy the Leased Premises pursuant to the terms of this Lease and the Hospital Operations Agreement (so long as the Hospital Operations Agreement remains in effect);

(c) observe and comply with the terms and conditions of this Lease, the Hospital Operations Agreement (so long as the Hospital Operations Agreement remains in effect), and all other instruments now recorded or hereafter recorded in the Land Records with Tenant's reasonable consent, which affect the Land and/or the Improvements or the use thereof, so far as the same shall at any time during the Lease Term be in force and effect;

(d) conform to, comply with, and take any and all action necessary to avoid or eliminate any violation of any Applicable Law applicable to the Leased Premises, Land, Improvements, or the vault space, sidewalks, curbs, driveways, and passageways and parking areas comprising part of the Leased Premises, Land, or the Improvements, or to the use or manner of use thereof, whether or not such Applicable Law shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Leased Premises, Land, or the Improvements, subject to Tenant's right to contest as provided in Section 5.2;

(e) observe and comply with the requirements of all policies of insurance which Tenant is required hereby to maintain under the terms of this Lease;

(f) procure and maintain all permits, licenses, and authorizations required for any use made of the Leased Premises (including, without limitation, required for any Alterations), or any part thereof, then being made, and for the lawful and proper operation and maintenance thereof;

(g) pay when due the entire cost of any work performed by Tenant on the Leased Premises, including, without limitation, the installation of equipment, facilities, signs, and fixtures therein, and the performance of Alterations; to procure all necessary permits before undertaking any such work; to perform such work in a good and workmanlike manner, employing materials of good quality; and to comply with all Applicable Law; and

(h) except as expressly set forth in this Lease, remain fully obligated under this Lease notwithstanding any sublease, or any indulgence, granted by District to Tenant or to any subtenant thereof.

7.2. Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair.* Tenant shall, at its sole cost and expense, take good care of, and keep and maintain, the Leased Premises, Improvements, and the Total Personal Property in good and safe order and condition, and shall make all repairs and replacements therein, thereon, and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises, Improvements, and the Total Personal Property in good and safe order and condition, however the necessity or desirability therefor may arise, and shall make all such repairs and replacement in the most expedient manner and in compliance with Applicable Law and, to the extent the Hospital Operations Agreement is in effect, the Hospital Operations Agreement. Tenant shall not commit, and shall use all reasonable efforts to prevent waste, damage, or injury to the Leased Premises, Improvements, or Total Personal Property.

7.2.2 *Cleaning of Leased Premises.* Tenant shall keep all areas of the Leased Premises clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions, and physical encumbrances.

7.2.3 *Other Areas.* Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures, or vegetation outside of the Leased Premises, which is owned or controlled by District or any District of Columbia agency or department. The provisions of this Section 7.2.3 shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.4 *No Obligation of District.* District, as the landlord under this Lease, shall not be required to furnish any services, utilities, or facilities whatsoever to the Leased Premises. District shall have no duty or obligation to make any alteration, change, improvements, replacement, or restoration or repair to the Leased Premises, or to demolish any Improvements. Subject to the terms of this Lease, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance, and management of the Leased Premises at all times during the Lease Term, except as set forth in Section 5.1.2.

7.2.5 *Replacements At End of Lease Term.* Except with respect to any Required Replacements for which Tenant chooses not to terminate this Lease in accordance with this Section, beginning in year 69 of the Lease Term, Tenant shall no longer be required to replace or improve, or repair or maintain, to the extent the costs of such repair or maintenance would be classified as capital expenditures or capital improvements under generally accepted accounting principles, consistently applied, the medical and general space, facilities, Hospital Necessities (as such term is defined in the Hospital Operations Agreement), and the Improvements (collectively, the “**Hospital Improvements**”), in a manner consistent with the capital and equipment replacement provisions as provided in Section 3.2 of the Hospital Operations Agreement (each, a “**Replacement**”). “**Required Replacements**” are those Replacements necessary to maintain the Service Standards and Quality Standards, if applicable, or otherwise required in accordance with

Applicable Law. If, beginning in year 69 of the Lease Term, Tenant determines that there is a need for a Replacement such that the generally expected lifecycle of the proposed Replacement exceeds the 75th year of the Lease Term, Tenant shall provide Notice to District of any such needed Replacement and its estimated cost. Upon receipt of such Notice from Tenant, District may, at its sole election, either (i) promptly make such Replacement at District's sole cost and expense, so that Tenant is able to operate the Leased Premises in accordance with the terms of this Lease or (ii) provide Notice to Tenant informing Tenant that it will not undertake such Replacement (such Notice, "**District's Election Notice**"). If District provides a District's Election Notice to Tenant that District will not undertake such Replacement, then Tenant may, at its sole election, either (x) terminate this Lease upon Notice to District, (y) undertake the Replacement at Tenant's sole cost and expense, or (z) waive the request for such Replacement to the extent such Replacement is not a Required Replacement. Notwithstanding the terms of this Lease, unless Tenant elects in writing to make such Replacement as provided in alternative (y) above, Tenant shall have no obligation to make any such Replacement at the end of the Lease Term or earlier termination of this Lease or in connection with the Handover Process or Handover Standards.

7.3. Utilities. Tenant, at its sole expense, shall be responsible for handling all aspects associated with utilities affecting the Leased Premises. Such responsibility includes, without limitation, (i) maintaining and repairing all utility lines and services to, on, or under the Leased Premises, or making arrangements therefor with the appropriate utility companies, and (ii) paying all costs, together with the applicable District of Columbia sales tax, for receipt of utility services to, on, or under the Leased Premises. District, as owner, shall execute any easements on the Land reasonably necessary to provide utilities servicing the Leased Premises.

ARTICLE 8 ALTERATIONS

8.1. Alterations Generally. Tenant may, at any time and from time to time, at its sole cost and expense, make alterations, installations, substitutions, improvements, renovations, or betterments (collectively, "**Alterations**") in and to the Leased Premises or any portion thereof provided that:

- (a) no Alteration affecting the structural portions of the Improvements shall be undertaken except under the supervision of an Architect or licensed professional engineer;
- (b) the Alterations will not result in a violation of any Applicable Law or require a change in any certificate of occupancy applicable to the Leased Premises;
- (c) the Alterations shall not materially (1) weaken or impair the structure or the Improvements, (2) reduce the size of the Improvements, (3) lessen the fair market value of the Leased Premises, or (4) reduce the utility or useful life of the Improvements;
- (d) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical, and other service or utility systems of the Leased Premises shall not be materially adversely affected; and

(e) for any Significant Alteration, Tenant shall obtain the prior written consent of District for such Significant Alterations in accordance with the provisions of Section 8.2.3 below.

Notwithstanding the foregoing, the term “Alterations” shall not include the installation in the Leased Premises of any of Tenant’s Personal Property when the installation involves merely affixing the Tenant’s Personal Property to the existing Improvements.

8.2. Performance of Alterations.

8.2.1 *Generally.* The Alterations shall be expeditiously made and completed with materials equal or better in quality than those used in the original construction of the Improvements and in a first-class and diligent manner. All Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant. Tenant shall, prior to the commencement of such Alterations, provide broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article 12. In addition, Tenant shall, prior to the commencement of any Significant Alterations, provide (i) appropriate construction performance and the labor and material payment bonds and (ii) proof of funding sources for the costs of such Significant Alterations.

8.2.2 *Requirements of Governmental Authorities.* Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, upon the written request of District promptly deliver copies of the same to District and cause the Alterations to be performed in compliance with all Applicable Law and requirements of any Leasehold Mortgages and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises that are being replaced.

8.2.3 *Significant Alterations.* Tenant shall submit to District, for District’s review and approval, plans and specifications, and any modifications thereof, showing in reasonable detail any proposed Significant Alteration not less than thirty (30) days before the proposed commencement of such proposed Significant Alteration. Within fifteen (15) Business Days after District’s receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed. If rejected by District, District shall state in writing with reasonable specificity its basis for its rejection, so as to give Tenant the opportunity to revise such plans and specifications accordingly, if it elects to do so. District may withhold its approval of any Significant Alteration involving an Alteration (or series of related Alterations) that change or modify the structural integrity of the Improvements in its sole and absolute discretion and for all other Significant Alterations, in District’s reasonable discretion. Any Alteration for which approval has been granted shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and

specifications shall be made without the prior consent of District in accordance with the terms hereof, which consent shall not be unreasonably withheld, conditioned or delayed. For any Significant Alterations, Tenant and its contractors shall obtain such completion bonds and payment and performance bonds in amounts and in form and substance and from sureties as are acceptable to District in its reasonable discretion.

8.2.4 *Alterations Required by Applicable Law.* Notwithstanding Section 8.2.3, Tenant shall be entitled to make Alterations that are required by a Governmental Authority in order for the Leased Premises to comply with Applicable Law without District consent; provided, however, that (i) District shall have been afforded an opportunity to discuss such Alteration with Tenant and the Governmental Authority(ies) requiring such Alteration and propose alternatives to the design of such Alteration and (ii) Tenant shall reasonably consider District's proposed alternatives and present such alternatives to the applicable Governmental Authority(ies) for approval.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1. Tenant's Default. Any of the following occurrences, conditions, or acts shall constitute an "**Event of Default**" under this Lease:

(a) if Tenant shall default in making payment when due of any Rent or other amount payable by Tenant hereunder, and such default shall continue for fifteen (15) days after District shall have given Notice to Tenant specifying such default and demanding that the same be cured;

(b) termination of the Hospital Operations Agreement by District for cause as provided in Section 5.3 or Section 9.2 of the Hospital Operations Agreement;

(c) Tenant shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Tenant or there shall be appointed any receiver or trustee to take possession of any property of Tenant and such petition or appointment is not set aside or withdrawn or does not cease within ninety (90) days from the date of such filing of appointment;

(d) the levy upon or other execution or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (other than any liens permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the acts or omissions of District or any of District's agents, employees, licensees, or contractors), which levy, attachment, or lien shall not be released, discharged, or bonded against within forty-five (45) days following the date Tenant receives Notice thereof;

(e) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or pay any insurance premiums, as and when the same become due and payable, or fail to reinstate, maintain, and provide evidence to District of the insurance required

to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Hospital Operations Agreement in accordance with its terms and conditions, and such failure shall continue for a period of ten (10) days after Notice of such failure from District;

(f) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any purpose or use other than the Permitted Uses or shall cease using the Leased Premises for the Permitted Uses and the same shall continue for a period of thirty (30) days after Notice of such breach from District to Tenant;

(g) Any representation or warranty made by Tenant in accordance with Section 6.2 of this Lease was materially false when made, and such misrepresentation is not remedied within a period of thirty (30) days after Notice of such misrepresentation from District;

(h) Tenant making any Transfer in violation of the terms of this Lease;

(i) Tenant becomes a Prohibited Person due to an action or omission arising from or relating to this Lease or the Leased Premises, or it shall become a violation of Applicable Law for District to do business with Tenant during the Lease Term, and either breach is not remedied within thirty (30) days after Notice of such breach from District to Tenant; or

(j) If Tenant shall default in the observance or performance of any term, covenant, or condition of this Lease not specified in the foregoing clauses (a) – (i) and Tenant shall fail to remedy such default within thirty (30) days after Notice by District, or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), within such period of time as may be reasonably necessary to cure such default, but in no event more than an additional one hundred fifty (150) days, provided that Tenant commences the cure within the thirty (30) day period after Notice by District and thereafter diligently pursues and completes such cure.

9.2. Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

9.2.2 *Termination.*

(a) District shall have the right, at its sole election, while any Event of Default shall continue, and notwithstanding the fact that District may have some other remedy hereunder or at law or in equity, to give Tenant Notice of its intention to terminate this Lease on a date specified in such Notice, which date shall be the later of ninety (90) days after the giving of such Notice or the period required to complete the Handover Process, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such Notice was the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder shall expire and terminate, and Tenant shall be liable

as provided in this Section 9.2. If any such Notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises, and, to the fullest extent permitted by law by ejectment proceedings or otherwise, the right to remove all persons and property therefrom and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any Notice provided for by Applicable Law, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs thereto.

(b) In the event of any termination of this Lease as provided in this Section 9.2, Tenant shall comply with the Handover Process and shall forthwith quit and surrender the Leased Premises after the period identified in subsection (a) to District, and District may, without further Notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, during the term the Hospital Operations Agreement is in effect, the amount set forth in the Hospital Operations Agreement and thereafter the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid. If the Purchase Option was exercised, Tenant shall execute a bill of sale conveying title of the Improvements to District upon the expiration or earlier termination of this Lease.

9.2.3 *Enforcement of Rights.* During the continuance of an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due pursuant to the terms of this Lease. Additionally, District shall be entitled to recover from Tenant all reasonable costs of maintenance and preservation of the Leased Premises incurred by District for which Tenant is responsible under the terms of this Lease.

9.2.4 *District's Right to Cure.* If Tenant shall default in the keeping, observance, or performance of any covenant, agreement, term, provision, or condition herein contained within the applicable notice and cure period, District, without thereby waiving such default, may perform but shall not be required to perform the same for the account and at the expense of Tenant. All reasonable costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossess proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for

purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.5 *Remedy for Noncompliant Mortgage.* In the event a mortgage or other lien or financial encumbrance encumbers Tenant's Leasehold Estate and does not meet the requirements of Article 13, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of such mortgage, lien, or finance encumbrance or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.3. Waiver by Tenant. Tenant hereby expressly waives, for itself and all Persons claiming by, through, or under it, any right of redemption, re-entry, or restoration of the operation of this Lease under any current or future Applicable Law, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.4. Accrual of Interest. Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.5. Attorney's Fees. Each Party shall be responsible for its own legal fees in the event either Party brings any legal action or proceeding to enforce the terms of this Lease.

9.6. Remedies Cumulative. No right or remedy herein conferred upon or reserved to District or Tenant is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.7. No Waiver. If one of the Parties shall institute proceedings against the other Party and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same nor of any other covenant, condition, or agreement set forth herein, nor of any of such Party's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District or Tenant to exercise or enforce any of its rights or remedies or District or Tenant's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies, or obligations. Neither Party shall be deemed to have waived any default by the other Party unless such waiver expressly is set forth in a written instrument signed by such Party. If a Party waives in writing any default by the other Party, such waiver shall not be construed as a waiver of any covenant,

condition, or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.8. Remedies for District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of Notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within thirty (30) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then Tenant shall have the right to declare a default of this Lease upon Notice to District, and pursue and exercise all remedies available at law or in equity, including, without limitation, specific performance or other equitable relief.

9.9. Mitigation. In the event of a default by either Party under this Lease, the non-defaulting Party shall use reasonable efforts to mitigate the damages it incurs as a result of such default.

9.10. Limitation on Remedies. Notwithstanding anything to the contrary contained in this Lease, neither Party shall be liable to the other Party for incidental, consequential, punitive, or other special damages in conjunction with this Lease.

9.11. Excuse for Non-Performance. The Party(ies) whose performance has been or will be directly affected by Force Majeure shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more events of Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more events of Force Majeure continues to materially and adversely affect the performance by such Party of such obligation(s) under or pursuant to this Lease; provided, however that the Party seeking the benefit of this Section 9.11 shall have first notified the other Party in writing, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure, which Notice shall include the Party's estimate of the length of delay, which estimate shall be non-binding on such Party, and any actions the affected Party is taking, or proposes to take, to minimize such delay.

9.11.1 Mitigation. The Party whose obligations are delayed as a result of Force Majeure shall use reasonable efforts to mitigate the length of the delay.

9.11.2 Notice. The affected Party shall provide Notice to the other Party of the cessation of a Force Majeure event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the event, which notice shall be given as soon as practicable after the cessation of the event.

ARTICLE 10 TRANSFER

10.1 Transfer. Tenant shall have the right to effectuate a Transfer in accordance with this Article 10. Any Transfer which is not in strict compliance with the terms and conditions of this Lease shall be void ab initio and shall be of no force and effect whatsoever.

10.2 Permitted Transfers. Transfers that are either Permitted Assignments (as defined below) or Permitted Changes of Control (as defined below) that meet the requirements of this Section 10.2 (collectively, "Permitted Transfers") shall not require District's consent or approval.

10.2.1 *Permitted Assignments*. Tenant shall have the right to assign this Lease, or sublease the entire Leased Premises to any Person who is an Affiliate of Tenant or UHS (each, a "**Permitted Assignment**") without the consent or approval of District. Tenant shall notify District in writing of the Permitted Assignment, together with (1) a copy of the proposed assignment and assumption agreement and/or sublease agreement, as applicable, (2) documentation confirming that the proposed assignment or sublease, as applicable, is a Permitted Assignment, (3) the information and, as applicable, documentation confirming the matters described in Section 10.3.2(a), and (4) a certification from the proposed Transferee affirming the representations and warranties contained in Section 6.2 as to itself as of the effective date of the Permitted Assignment, as soon as reasonably practicable, but in any event at least thirty (30) days prior to the effective date of the Permitted Assignment. Tenant shall deliver to District a copy of the fully executed assignment or sublease, as applicable, within five (5) Business Days after the same has been executed by the parties thereto. Transferee shall deliver to District proof of insurance required under Article 12 obtained by Transferee no later than five (5) Business Days following the consummation of the Permitted Assignment.

10.2.2 *Permitted Change of Control*. (i) Any Transfer of the Equity Interests of Tenant to any Person who is an Affiliate of Tenant, Member, or UHS, or (ii) any direct or indirect (1) change of Control or (2) sale, assignment, conveyance, transfer, or change in the Equity Interests, of Member or the direct or indirect owners of Member (each, a "**Permitted Change of Control**") shall not require District's consent or approval. Tenant shall notify District in writing of the Permitted Change in Control together with documentation confirming that the proposed Change of Control is a Permitted Change of Control as soon as reasonably practicable, but in any event at least thirty (30) days prior to the effective date of the Permitted Change of Control.

10.3 Transfers Requiring District Consent.

10.3.1 *Consent*. Except for Permitted Transfers made in accordance with Section 10.2 and Space Leases made in accordance with Section 10.7 which do not require District's consent or approval, neither Tenant nor its Member may effectuate a Transfer without the prior written consent of District, with such consent shall be in District's sole and absolute discretion. Consent to any Transfer shall not be taken or construed to diminish or enlarge any of the rights or

obligations of either of the Parties under this Lease. Consent to one Transfer shall not be deemed consent to any other Transfer to which the provisions of this Article 10 shall apply.

10.3.2 *Required Documentation.* If Tenant or its Member desires to effect a Transfer that requires District consent in accordance with Section 10.3.1, as early as reasonably practicable, but in any event at least ninety (90) days prior to the proposed effective date of the proposed Transfer, Tenant shall provide to District the following in order for District to determine whether or not to consent to such Transfer:

- (a) the name and address of the proposed Transferee and the names and addresses of the Persons that are Members of or Control the proposed Transferee;
- (b) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer (including, without limitation, a letter of intent executed by the applicable parties);
- (c) evidence of the proposed Transferee's ownership or management of similarly sized hospitals;
- (d) evidence of whether the proposed Transferee is part of a large health care system;
- (e) evidence of quality metrics associated with the proposed Transferee's existing operations;
- (f) evidence of the nature of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee (i) is legally entitled (or has a reasonable expectation of becoming legally entitled) to operate the Leased Premises and (ii) is not a Prohibited Person;
- (g) banking, financial, and other credit information, including, but not limited to, audited financial statements, to the extent available, relating to the proposed Transferee; and
- (h) proof of insurance required under Article 12 obtained by the Transferee.

Within ninety (90) days after District's receipt of the applicable documentation set forth in this Section 10.3, District shall provide Tenant Notice as to whether District consents to any such proposed Transfer that requires District's consent in accordance with the terms of this Section 10.3.

10.3.3 *Confidentiality of Documentation.* In the event Tenant provides the District any documentation in accordance with Section 10.3.2 that is generally held in strict confidence by Tenant, its Members, or any other Person and is not of the kind that would customarily be released

to the general public by the applicable Person because the disclosure thereof would cause substantial harm to the competitive position of the such Person, the District agrees to maintain such documentation as confidential and shall not disclose such information to any Persons other than its employees and consultants on a need-to-know basis. Tenant shall clearly mark each page of any documents subject to the provisions of this Section 10.3.3 as “Confidential Information.” Nothing contained herein shall limit or restrict the District from disclosing, to the extent required by Applicable Law, any documents to the United States Congress, the Council of the District of Columbia, the District of Columbia Inspector General, or the District of Columbia Auditor.

10.3.4 *Third Party Change of Control of UHS.* Notwithstanding anything to the contrary contained in this Section 10.3, if there is a Transfer of the Equity Interests of Member that constitutes a change of Control of Member which is not a Transfer to or among Member’s or UHS’ Affiliates (a “**Third Party Change of Control of UHS**”), Tenant shall notify the District as soon as reasonably practicable, but in any event at least ninety (90) days prior to the effective date of the Third Party Change of Control of UHS. Within ninety (90) days after District’s receipt of such notice and the applicable documentation set forth in Section 10.3.2 from Tenant, District may elect to terminate this Lease by delivering Notice of such termination to Tenant within such ninety (90) day period (the “**Termination Notice**”). The failure of District to deliver to Tenant the Termination Notice within such 90-day period shall render District’s termination right under this Section 10.3.4 null and void. Upon District’s delivery of the Termination Notice, the termination of this Lease shall become effective upon the conclusion of the Handover Process in accordance with the terms of Section 3.3.1 of this Lease.

10.4 Written Agreement. Any assignment of this Lease or sublease of the entire Leased Premises shall be by written agreement consistent with all the terms and conditions of this Lease. In the event Tenant wishes to undertake a Transfer that is an assignment of this Lease or a sublease of the entire Leased Premises, any assignment and assumption agreement or sublease agreement executed in connection therewith must expressly provide that: (i) the Transfer is subject to all of the terms and conditions of this Lease; (ii) all rights of Transferee (other than such rights (e.g., indemnities) as may, by their terms, extend to periods subsequent to the expiration or earlier termination of this Lease) shall terminate no later than immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of District to Tenant or to any Transferee for any obligations arising or accruing after such expiration or earlier termination; (iii) the Transferee shall assume all of the obligations of Tenant under this Lease which first accrue after the effective date of such Transfer; and (iv) in case of any conflict between any provisions of this Lease and any provisions of such agreement of Transfer, this Lease will control. A copy of this Lease must be attached to any such agreement of Transfer.

10.5 Liability Following Direct Assignment. In the event of a Transfer in accordance with this Article 10 that is a Direct Assignment which results in a substitution of a new entity as Tenant under this Lease, the transferring Tenant shall be released from all liabilities and obligations accruing after the date of such Direct Assignment, provided that the Transferee expressly assumes in writing all of Tenant’s obligations hereunder first accruing from and after such Direct Assignment. Nothing in this Section 10.5 shall be construed to release the transferring

Tenant from any liability or obligation which accrued prior to the effective date of such Direct Assignment.

10.6 District Recognition. District shall not be obligated to recognize any right of any Person to an interest in the Leasehold Estate, Leased Premises, or to own or operate the Improvements or conduct any other activity or activities on the Leased Premises authorized under this Lease acquired in violation of the terms of this Lease.

10.7 Space Leases. Tenant shall have the right, without the prior consent of District, to enter into Space Leases, or renew, extend, modify, restate, terminate, or surrender any Space Lease. No Space Lease may permit the occupancy or operation by a third party of all, or substantially all, of the Leased Premises.

10.8 Prohibited Transactions. Notwithstanding any provision to the contrary, in no event shall any Transfer or Space Lease (a) be made to a Prohibited Person, (b) be for a term longer than the Lease Term, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, or (e) violate Applicable Law, or any term, covenant, condition, or provision of this Lease.

10.9 Hospital Operations Agreement. If, as of the effective date of any Transfer which is an assignment of this Lease or sublease of the entire Leased Premises, the Hospital Operations Agreement is in effect, then it shall be a condition to any such assignment of this Lease or sublease of the entire Leased Premises that the assignee or sublessee, as applicable, shall also simultaneously assume the Tenant's rights and obligations under the Hospital Operations Agreement.

ARTICLE 11 EXCULPATION AND INDEMNIFICATION

11.1. District Not Liable for Injury or Damage, Etc. From and after the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued, the District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify, and hold the District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty, or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic, or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about, or concerning the Leased Premises, irrespective of the cause of injury, damage, or loss or any latent or patent defects in the Leased Premises, except to the extent (i) any of the foregoing is due to the gross negligence, fraud, or willful misconduct of any District Indemnified Party or (ii) as otherwise specified in this Lease.

11.2. District's Exculpation. Except for gross negligence, fraud, or willful misconduct, none of the District Indemnified Parties shall have any liability (personal or otherwise) hereunder, and no property or assets of the District Indemnified Parties shall be subject to enforcement

procedures for the satisfaction of Tenant's remedies hereunder or any other liability of the District Indemnified Parties arising from or in connection with this Lease or the Leased Premises. Any damages and claims against District shall be limited to the value of its interest in the Land and the Improvements.

11.3. Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify, and hold the District Indemnified Parties harmless from all loss, cost, liability, claim, damage, and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties, and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions, or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees, or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about, or concerning the Leased Premises during the Lease Term, including, without limitation, any acts, omissions, or negligence in the making or performing of any repairs, restoration, alterations, or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Law; or (vi) any default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused by the gross negligence, fraud, or willful misconduct of any such District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages created, caused, or released by Tenant or any Tenant's Agent; provided, however, that Tenant shall not be required to indemnify District or any District Indemnified Party if and to the extent that such Environmental Damage was caused by the gross negligence, fraud, or willful misconduct of a District Indemnified Party. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the Leased Premises caused or permitted by Tenant or Tenant's Agents results in any contamination of the Leased Premises or Environmental Damage, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article 11 shall include, without limitation, the burden and expense of defending all claims, suits, and administrative proceedings (with qualified counsel) for matters which Tenant provides its indemnification under this Article 11, even if such claims, suits, or proceedings are groundless, false, or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against any of the District Indemnified Parties.

11.3.4 *No Effect by Insurance Coverage.* The obligations of Tenant under this Article 11 shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to workers' compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

11.4. Defense of Claim.

11.4.1 *Tenant's Defense Obligations.* If any claim, action, or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article 11 for indemnification by Tenant, then, unless District determines that such representation violates District policy or is legally prohibited, upon demand by District, Tenant shall either resist, defend, or satisfy such claim, action, or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action, or proceeding is covered by insurance) or such other attorneys as District shall approve, which approval shall not be unreasonably withheld, conditioned, or delayed. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give Notice of such election to District and the District Indemnified Party within ten (10) days after receiving Notice of the claim therefrom. The District Indemnified Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action, or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior Notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5. Notification and Payment. District shall promptly notify Tenant of the imposition of, incurrence by, or assertion against a District Indemnified Party of any cost or expense as to which Tenant has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article 11. Tenant agrees to pay such District Indemnified Party all amounts due from Tenant under this Article 11 within sixty (60) days after receipt of the Notice therefrom. Any delay by District in sending such Notice does not relieve Tenant of the indemnification obligations set forth in this Article 11, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6. Survival. The provisions of this Article 11 shall survive the expiration or termination of the Lease Term.

ARTICLE 12 INSURANCE AND CASUALTY

12.1. Insurance Requirements. Tenant will, at its sole cost and expense, keep and maintain or cause to be kept and maintained during the Lease Term the insurance required under Exhibit B. Certificates of insurance evidencing the issuance of all insurance required by Exhibit B, describing the coverage and providing for at least ten (10) days' prior Notice to District by the insurance company of cancellation or termination, shall be delivered by Tenant to District prior to the Commencement Date for the first Component for which a Certificate of Substantial Completion is issued and from time to time thereafter within a reasonable period of time after District's reasonable request therefor. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance also shall deliver to District, together with the certificates, proof reasonably satisfactory to District that the premiums for each policy are not then overdue. In addition, Tenant shall deliver to District an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each issued policy within a reasonable period of time after District's request therefor.

12.2. District Right to Obtain Insurance. In the event that Tenant fails to provide District, as landlord, with written evidence that Tenant has obtained all insurance coverage required by this Lease, District may, following at least ten (10) days' advance Notice to Tenant of its intention to do so, procure any such insurance for such periods as District shall elect not exceeding twelve (12) months, and Tenant shall, on demand, reimburse District for all outlays for such insurance with interest thereon at an annual rate equal to the Default Rate from the date District advances such premiums until repaid all sums due under this Section 12.2.

12.3. No Invalidation of Insurance. Tenant shall at no time whatsoever do or permit to be done any act or thing in, to, or about the Leased Premises or otherwise which would or could have the effect of invalidating, in whole or in part, or reducing the scope or amount of coverage provided by any of the insurance maintained pursuant to this Article 12. Tenant shall not permit any buildings, other structures, or improvements at any time to be put, kept, or maintained on the Leased Premises in such condition that the same cannot be insured as required pursuant to this Article 12.

12.4. Space Leases. All Space Leases pertaining to any part of the Leased Premises shall require either Tenant or the counterparty thereto to carry liability insurance in such amounts as required under Exhibit B naming Tenant and District as additional insureds.

12.5. Disclosure of Information. Tenant agrees that District may disclose the name and contact information of its insurers to any third party which presents a claim against District for any damages or claims resulting from or arising out of this Lease.

12.6. Casualty.

12.6.1 *Notice to District.* If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of the same and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant's discovery of the damage.

12.6.2 *Obligation to Restore.* If all or any portion of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as existed immediately before such casualty (a "**Casualty Restoration**").

12.6.3 *Disposition of Insurance Proceeds.* All insurance proceeds received as a result of a casualty loss shall be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration. If as of the date of any fire or other casualty there is a Leasehold Mortgage, the proceeds of fire or casualty insurance may be made payable to such Leasehold Mortgagee; provided that, such Leasehold Mortgagee shall be obligated to hold such insurance proceeds separate and apart from its own funds and apply the same to the Casualty Restoration. The proceeds shall be paid out from time to time to Tenant as such work progresses, upon the written request of Tenant. Any excess insurance proceeds remaining after the completion of the Casualty Restoration shall be paid over to Tenant.

12.6.4 *Commencement of Construction Work.* Tenant shall apply for building permits no later than thirty (30) days following receipt of the insurance proceeds and shall commence the construction work in connection with a Casualty Restoration within thirty (30) days after receipt of the building permits. Tenant shall diligently pursue the completion of the Casualty Restoration.

12.6.5 *Effect of Casualty on Lease.* This Lease shall not terminate, be forfeited, or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenantability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District's and Tenant's obligations hereunder shall continue as though the Leased Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution, or reduction whatsoever; provided, however, that if Tenant has exercised the Purchase Option or Modified Lease Option, and there is no Event of Default under this Lease, Base Rent shall equitably abate during the time period when Tenant is unable to use any portion of the Leased Premises during the Casualty Restoration. Notwithstanding the foregoing, if any casualty shall occur within the last eighteen (18) months of the Lease Term, and the cost of the Casualty Restoration shall exceed ninety percent (90%) of the replacement cost of the total Improvements, and Tenant so certifies to District in writing within thirty (30) days after such casualty (including evidence of cost estimates and value to support the certification), then Tenant shall have the right to terminate this Lease, and neither Party shall have any further rights or obligations hereunder, except to the extent the same survive the expiration or earlier termination of this Lease. As a condition of Tenant's termination, Tenant shall either (i)(a) assign to District any rights Tenant

may have in and to any casualty insurance proceeds payable with respect to such damage or destruction and (b) pay to District any such proceeds theretofore collected by it, or (ii) if requested by District by Notice given to Tenant within ten (10) days after the date of Tenant's termination Notice (a) demolish any remaining Improvements, (b) remove from the Land all debris resulting from such damage, destruction, or demolition, (c) assign to District any rights Tenant may have in and to any casualty insurance proceeds payable with respect to such damage or destruction in excess of the reasonable cost of such demolition of remaining Improvements and such removal of debris, and (d) pay to District any such proceeds theretofore collected by it, after deducting therefrom the reasonable cost of such demolition of remaining Improvements, removal of debris, and such collection. Upon termination of the Lease as provided above, Rent and other charges under this Lease shall be apportioned and paid to the date of such termination.

ARTICLE 13 LEASEHOLD MORTGAGES

13.1. Leasehold Mortgages Permitted. Tenant shall not engage in any financing or other transaction creating a mortgage or other lien or financial encumbrance upon the Leasehold Estate or suffer any lien or financial encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, except that Tenant may encumber the Leasehold Estate with one or more Leasehold Mortgages.

13.2. Leasehold Mortgage Proceeds. The proceeds of any Leasehold Mortgage shall not be used to fund (a) distributions to Tenant or its Affiliates or (b) acquisition, development, construction, operation or any other costs related to any real property, personal property, or business operation other than for capital improvements of the Hospital or the Parking Facility.

13.3. Leasehold Mortgage Submissions.

13.3.1 *Notice to District.* In the event that Tenant wishes to obtain a Leasehold Mortgage, Tenant shall provide to District the following information and documents for District's review at least thirty (30) days prior to the effective date of the proposed Leasehold Mortgage:

(a) the name and address of the proposed Leasehold Mortgagee and information reasonably sufficient to enable District to determine whether the proposed Leasehold Mortgagee is an Institutional Lender/Investor;

(b) a certificate of an authorized officer, managing general partner, managing member, trustee, or other authorized Person, whichever shall be applicable, of the proposed Leasehold Mortgagee stating whether the proposed Leasehold Mortgagee is a Prohibited Person;

(c) the proposed loan documents evidencing the Leasehold Mortgage;

and

(d) any appraisal or other analysis provided to or obtained by the proposed Leasehold Mortgagee regarding the value of Tenant's interest in the Leasehold Estate, if available to Tenant.

13.3.2 *Tenant's Submissions Following Closing on Leasehold Mortgage.* Tenant shall deliver to District a copy of the instrument evidencing the Leasehold Mortgage promptly following the execution, delivery, and (if applicable) recordation thereof, together with a certification by Tenant confirming that the copy is true is a true copy of such instrument. In addition, Tenant shall deliver to District a certification from the Leasehold Mortgagee (a) confirming the address of such Leasehold Mortgagee for notices and (b) acknowledging that its Leasehold Mortgage is subject to the terms, conditions, and provisions of this Lease and shall be a claim and lien only upon the Leasehold Estate and shall not constitute a lien upon District's fee simple estate.

13.3.3 *Leasehold Mortgage Considered Permitted Mortgage.* Upon District's receipt of the submissions required under Section 13.3.1 and Section 13.3.2, the Leasehold Mortgage that is the subject of such submissions shall be considered a Permitted Mortgage under this Lease.

13.3.4 *Assignment by Permitted Mortgagee.* District shall not be bound to recognize an assignment of a Permitted Mortgage unless and until District shall be given Notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Permitted Mortgagee hereunder with respect to the Permitted Mortgage being assigned.

13.4. Effect of Permitted Mortgages.

13.4.1 *No Greater Rights.* The execution and delivery of a Permitted Mortgage shall not give or be deemed to give a Permitted Mortgagee any greater rights against District than those granted to Tenant hereunder.

13.4.2 *Subordination.* The lien of all Permitted Mortgages, and any other encumbrances on the Leasehold Estate, whether permitted or not permitted pursuant to the terms of this Lease, shall be subject to this Lease and subordinate to the District's fee simple title.

13.4.3 *Conflict Between Terms.* As between District and Tenant, the terms and conditions of this Lease shall govern in the event of a conflict between the terms hereof and the terms and conditions of any Permitted Mortgage or any instrument relating to the loan received thereby (or any other transaction), except as may otherwise be expressly agreed to in writing by District and Tenant.

13.5. Restrictions on Use of Proceeds of Permitted Mortgage. Except as otherwise consented to by District, which consent shall not be unreasonably withheld, conditioned or delayed, or as payment or reimbursement of construction and development costs associated with

the Improvements, Tenant shall not pay, disburse, or distribute any proceeds of a Permitted Mortgage to itself or any Affiliate or Member of Tenant.

ARTICLE 14 EMINENT DOMAIN

14.1. Total Condemnation. If the Leased Premises or substantially all of the Leased Premises shall be taken by eminent domain by any competent Governmental Authority, this Lease shall terminate upon the date that title to the Leased Premises is vested in the condemning authority. The condemnation award shall be apportioned as set forth in Section 14.4.

14.2. Partial Condemnation. If less than all of the Leased Premises shall be taken by eminent domain by any competent Governmental Authority, and District and Tenant mutually determine that the remainder is unsuitable for use by Tenant for Tenant's uses and purposes, or, mutually determine that the remaining Lease Term is so limited to render restoration or repair of the remainder uneconomical or unfeasible, then this Lease shall terminate as of the date that title to the Leased Premises is vested in the condemning authority. If less than all of the Leased Premises shall be taken by eminent domain by any competent Governmental Authority, and District and Tenant mutually determine that the remainder is suitable for use by Tenant for Tenant's uses and purposes, then this Lease shall remain in full force and effect as to that portion of the Leased Premises not taken. In both instances, the condemnation award shall be apportioned as set forth in Section 14.4. If Tenant has exercised the Purchase Option or Modified Lease Option, Base Rent shall be equitably adjusted for the remainder of the Lease Term to reflect the portion of the Leased Premises that was taken.

14.3. Temporary Taking. If all, substantially all, or a portion of the Leased Premises is taken by eminent domain by any competent Governmental Authority, which taking does not extend beyond the Lease Term so that District's interest is unaffected thereby, then the Lease Term shall not be reduced or affected in any way. Except only to the extent that Tenant's ability to use and operate the Leased Premises is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority or court, Tenant shall continue to perform its obligations under this Lease and observe all of the other covenants, agreements, terms, and provisions of this Lease, and for so long as the Hospital Operations Agreement is in effect, the Hospital Operations Agreement, as though such taking had not occurred. Notwithstanding Section 14.4, in the event of any such taking, Tenant shall be entitled to receive the entire amount of any condemnation award made for such taking; provided, however, if the period of temporary use or occupancy shall extend beyond the Expiration Date, the condemnation award shall be prorated between District and Tenant as of such date of expiration pursuant to Section 14.4.

14.4. Allocation of Award. In the event of any taking by eminent domain of any interest in the Leased Premises, then the court in such condemnation proceedings shall be requested, if not prohibited by Applicable Law, to make separate awards to District and Tenant, so that: (i) District receives the award for its fee simple interest in and to the Leased Premises and District's interest in this Lease (including, without limitation, the amounts payable by Tenant hereunder), subject to

the Leasehold Estate and (ii) Tenant receives the award for the Leasehold Estate (subject to the reversionary interest of District upon expiration of the Lease Term) and the ownership of its Improvements in the event the Purchase Option is exercised. To the extent permitted by Applicable Law, this Section 14.4 shall be construed as superseding any statutory provisions now in force or hereafter enacted concerning condemnation proceedings. If such court is prohibited by Applicable Law from making separate awards to District and Tenant, or declines to do so, then the award in such condemnation proceedings shall be divided between District and Tenant so that each receives the amount it would have received if separate awards had been made.

14.5. Tenant's Restoration. Notwithstanding the terms of Section 14.4, if any of the Improvements are affected by a taking by eminent domain, and if this Lease is not terminated as a result thereof, any condemnation proceeds received by or otherwise awarded with respect to the Improvements shall initially be the property of Tenant so that Tenant can repair and restore such affected Improvements to a functional unit to the extent physically practical under the circumstances utilizing such proceeds. Tenant shall deposit such proceeds into a fund that will be managed by an escrow agent mutually selected by the Parties. The Parties shall enter into an escrow agreement with the escrow agent which will provide that Tenant is entitled to receive disbursements of the condemnation proceeds as work is performed by Tenant as provided in this Lease. Tenant shall apply for building permits for the repair and/or restoration work no later than thirty (30) days following receipt of the condemnation proceeds. Tenant shall commence the repair and/or restoration work within six (6) months after the later of (i) the date of judgment, decree, or other vesting event and Tenant's receipt of the applicable condemnation proceeds or the date Tenant would have received the proceeds had it made timely application for the same from the court registry and (ii) Tenant's receipt of all required permits and approvals for such work. To the extent Tenant fails to repair or restore the Improvements as provided herein or there are funds remaining in the escrow account after Tenant completes the applicable repairs or restoration, such funds shall become the property of District and may be used by District in its sole discretion.

ARTICLE 15 GENERAL PROVISIONS

15.1. Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations, or agreements, either written or oral, pertaining to the subject matter of this Lease.

15.2. Amendments. None of the terms or provisions of this Lease may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted.

15.3. Severability. If any provision of this Lease is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provision shall be fully severable, this Lease shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Lease, and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or

by its severance from this Lease, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Lease. Furthermore, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible that is legal, valid, and enforceable

15.4. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Lease by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

15.5. Incorporation of Exhibits; Recitals. All Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

15.6. No Implied Waivers. No waiver by a Party of any term, obligation, condition, or provision of this Lease shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition, or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue, or extend the Lease Term or the Lease, or affect any Notice given to Tenant prior to the receipt of such moneys.

15.7. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, the successors and assigns of District and Tenant, and where the term "Tenant" or "District" is used in this Lease, it shall mean and include their respective authorized successors and assigns.

15.8. Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease," and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented, or restated from time to time. References to

any exhibits shall be construed to mean references to such exhibits as revised from time to time. The terms “include” and “including” shall be construed at all times as being followed by the words “without limitation” or “but not limited to” unless the context specifically indicates otherwise.

15.9. Time of Performance. All dates for performance (including cure) in this Lease shall expire at 11:59 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, District of Columbia government holiday, or day in which the District of Columbia government is officially closed for business is automatically extended to the next Business Day.

15.10. Notices.

15.10.1 To District. Any notices given under this Lease shall be in writing and delivered (i) by U.S. Certified Mail (return receipt requested, postage pre-paid), (ii) by hand, (iii) by reputable private overnight commercial courier service, or (iv) such other means as the Parties may agree in writing, to District at the following addresses:

District of Columbia
Department of General Services
2000 14th Street, N.W., 8th Floor
Washington, D.C. 20009
Attn: Director

With a copy to:

District of Columbia
Department of General Services
2000 14th Street, N.W., 8th Floor
Washington, D.C. 20009
Attn: General Counsel

District of Columbia
Department of Health Care Finance
441 4th Street, NW, Suite 900S
Washington, D.C. 20001
Attn: Director

District of Columbia
Department of Health Care Finance
441 4th Street, NW, Suite 900S
Washington, D.C. 20001
Attn: General Counsel

15.10.2 To Tenant. Any notices given under this Lease shall be in writing and delivered (i) by U.S. Certified Mail (return receipt requested, postage pre-paid), (ii) by hand, (iii) by reputable private overnight commercial courier service, or (iv) such other means as the Parties may agree in writing, to Tenant at the following addresses:

UHS East End Sub, LLC
c/o Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attn: General Counsel – Matthew Klein

Notices served upon Tenant or District in the manner aforesaid (each, a “**Notice**”) shall be deemed to have been received for all purposes hereunder at the time such Notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the Notice is receipted or refused; (ii) if given by overnight courier service, on the next Business Day after the Notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If Notice is tendered under the terms of this Lease and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Lease. The Parties agree that counsel to any of them may provide Notice to the other Parties under this Lease.

15.11. Memorandum of Lease. District or Tenant, at the written request of the other, will promptly execute and deliver to Tenant, a Memorandum of Lease, duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term, and any other provisions hereof as either of the Parties may reasonably request. The Memorandum of Lease may be recorded by either District or Tenant. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease.

15.12. Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

15.13. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15.14. Anti-Deficiency Limitations.

15.14.1 *Tenant Acknowledgment.* Though no financial obligations on the part of District are anticipated, Tenant acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Antideficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

15.14.2 *Unauthorized Actions by District.* Tenant acknowledges and agrees that any unauthorized action by District is void.

15.15. No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them, or any third party, a relationship of principal and agent, employment, partnership, or joint venture. The Parties shall have no joint and several liability.

15.16. Litigation. Tenant shall furnish to District Notice of each action, suit, or proceeding before any court or other governmental body or any arbitrator that allege a loss or injury on or concerning the Leased Premises or that could affect (i) Tenant's ability to fulfill its obligations under this Lease or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

15.17. Procurement of Materials and Supplies. To the maximum extent feasible, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to the District of Columbia.

15.18. Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the 116th Congress of the United States, plus twenty one (21) years thereafter.

15.19. Estoppel Certificates. Tenant agrees at any time and from time to time upon not less than thirty (30) days' prior written request by District, to execute, acknowledge and deliver to District, and District agrees from time to time in connection with the encumbrance of the Leased Premises with a Leasehold Mortgage or a Transfer permitted hereunder, upon not less than thirty (30) days' prior written request by Tenant, to execute, acknowledge and deliver to Tenant, a statement in writing, certifying that (a) this Lease is in full force and effect; (b) this Lease has not been modified or amended (or if it has, identifying the modifications and amendments); (c) to such Party's knowledge, the Party requesting the certificate is not then in default under this Lease; (d)

to such Party's knowledge, the Party requesting the certificate has fully performed all of its respective obligations hereunder (or, if it has not, identifying such failures to perform); and (e) such other factual statements as such requesting Party may reasonably request.

15.20. Joint Preparation. District and Tenant each acknowledge that it has thoroughly read and reviewed this Lease, including all exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Lease has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party hereto.

15.21. Time of the Essence; Standard of Performance. Time is of the essence with respect to all matters set forth in this Lease. For all deadlines set forth in this Lease, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

15.22. Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Lease, provided that the Party receiving the request will not incur any out-of-pocket expense or liability with respect to such additional documents or instruments.

15.23. Law Applicable; Forum for Disputes. This Lease shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Tenant agree that any suit, action, or proceeding arising out of this Lease, or any transaction contemplated hereby, shall be brought exclusively in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia. District and Tenant irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Lease or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

15.24. Conflict of Interests; Representatives Not Individually Liable. No official or employee of District shall participate in any decision relating to this Lease which affects his or her personal interests or the interests of any District of Columbia agency, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of District shall be personally liable to Tenant or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Tenant or such successor-in-interest or on any obligations hereunder. No Member, employee, officer, director, or manager of Tenant shall be personally liable to District or any successor-in-interest in the event of any default or breach by Tenant or for any amount which may become due to District or such successor-in-interest or on any obligations hereunder.

15.25. Landlord's Lien. District does hereby subordinate any and all lien rights which District may now have under this Lease or hereinafter acquire in accordance with any Applicable Law (including, without limitation, D.C. Official Code § 42-3213) in Tenant's Personal Property which may be located in the Leased Premises (including, without limitation, all accounts receivable of Tenant), to all lien rights and security interests which may be held by any seller, lessor, or lending institution which (i) provides financing to Tenant secured by any of such items or (ii) provides such items or the funds to purchase or lease the same. This subordination provision is hereby declared by District and Tenant to be self-operative and no further instrument shall be required to effect such subordination of District's lien rights; provided, however, that District shall promptly execute any and all documentation which may be reasonably requested by Tenant to confirm the subordination of District's lien rights in relation to said items.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be duly executed as of the day and year first above written.

DISTRICT OF COLUMBIA, a municipal corporation

By: _____
Name: _____
Title: _____

UHS EAST END SUB, LLC, a District of Columbia limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of Land

[to be attached]

Exhibit B

Minimum Insurance Requirements

I. GENERAL REQUIREMENTS. Tenant will, at its sole expense, keep and maintain or cause to be kept and maintained during the Lease Term the types of insurance specified below. The Tenant shall have its insurance company(ies) submit original Certificates of Insurance and a copy of the Declarations and Endorsement Page(s) giving evidence of the required coverage prior to occupying the Leased Premises. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia with an A.M. Best Company rating of A- / VII or higher. All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia (“District”).

a. District shall be included in all policies required hereunder to be maintained by the Tenant as an additional insured for claims against the District relating to this Lease, with the understanding that any affirmative obligation imposed upon the insured Tenant (including without limitation the liability to pay premiums) shall be the sole obligation of the Tenant, and not the additional insured. All of the Tenant’s liability policies shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of this Lease. These policies shall include a separation of insureds clause applicable to the additional insured.

b. If the Tenant maintains broader coverage and/or higher limits than the minimum requirements set forth herein, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

c. Tenant shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant’s operation and use of the Leased Premises. The cost of such insurance shall be borne by the Tenant.

d. Commercial General Liability Insurance. Tenant shall procure and maintain, and shall require its tenants under Space Leases to procure and maintain, during the entire occupancy of the Leased Premises, commercial general liability insurance coverage with limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate limit, a \$1,000,000 personal and advertising injury limit, \$1,000,000 Tenants Legal Liability, and a \$2,000,000 products-completed operations aggregate limit.

e. Environmental Liability/Pollution Liability Insurance. The Tenant shall provide satisfactory evidence of environmental liability insurance covering losses caused by

pollution or other hazardous conditions arising from ongoing or completed operations of the Tenant. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Tenant's pollution liability policy or (ii) \$3,000,000 per occurrence and \$5,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Tenant warrants that any retroactive date applicable to coverages under the policy precedes the Tenant's performance of any work under the Contract and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

The Tenant also must furnish certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Tenant for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Tenant's operations. Such coverages must be maintained at \$2,000,000 per occurrence and \$5,000,000 in the annual aggregate.

f. Umbrella/Excess Insurance. Tenant shall procure and maintain during the entire occupancy of the Leased Premises umbrella/excess insurance policies with total limits of liability of not less than \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate, following the form and in excess of the applicable general liability policy. The general liability policy must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

g. Property Insurance. Tenant shall carry all risk property insurance written on a replacement cost value covering 100% of the replacement cost of all of the Improvements: Loss to the undamaged portion of the Improvements (Coverage A), the cost of demolishing the undamaged portion of the Improvements (Coverage B), the increased cost of reconstruction or repairs to comply with current ordinances or laws (Coverage C) and the Business Interruption loss during the additional time required for making the changes to the Improvements in coverages A, B and C (Coverage D).

Such policy shall include business income covering loss of rental income in amount sufficient to cover the greater of the estimated period of reconstruction plus a 90 day extended period of indemnity or three (3) years.

h. Indexing of limits; documenting initial cost to construct Improvements. The policy limits contained in d. and e. shall be increased every 10 years beginning on the tenth anniversary of the Execution Date to the same extent, if any, that the CPI increases during such 10-year period. Upon final completion of the initial construction of the Improvements and the

Commencement of this Lease, Tenant and District shall acknowledge an Addendum to this Exhibit B setting forth the final cost for the initial construction of the Improvements.

- B. LIABILITY. These are the required minimum insurance requirements established by District. However, the required minimum insurance requirements provided above will not in any way limit the Tenant's liability under this Lease.
- C. TENANT. Tenant IS solely responsible for any loss or damage to ITS personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District.
- D. NOTIFICATION. The Tenant shall ensure that all policies provide that the District shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Tenant shall provide ten (10) days prior written notice to the District in the event of non-payment of premium. The Tenant will also provide to the District an updated Certificate of Insurance should its insurance coverages renew during the Lease.
- E. CERTIFICATES OF INSURANCE/EVIDENCE OF PROPERTY INSURANCE. The Tenant shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing occupancy of the Leased Premises. Evidence of insurance shall be submitted to:

District of Columbia

**And mailed to the attention of:
Insurance Program Officer
Office of Risk Management
441 Fourth Street NW 800 South
Washington, DC 20001
(202) 727-8600
orm.insurance@dc.gov**

District may request and Tenant shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Tenant expires prior to termination of the Lease, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the District prior to the date of expiration of all such initial insurance. Evidence of Property Insurance shall be provided on a completed Accord Evidence of Commercial Property Insurance form, identifying Government of District of Columbia as additional insured.

- F. DISCLOSURE OF INFORMATION. The Tenant agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of this Lease.

II. SELF-INSURANCE. Tenant may participate in a self-insure program for the Commercial General Liability Insurance requirements set forth above, provided the self-insurance program is managed by the parent organization of Tenant, Universal Health Services, Inc., and maintained for the benefit of the parent organization and its other affiliated entities such as Tenant, and on the following additional terms: (1) the program covers, with or without supplemental policies of insurance, all of Tenant's operations on the Premises; (2) Tenant is assessed a fee commensurate with the fees paid by all other affiliates of Tenant's parent organization for participation in the program; (3) claims arising from Tenant's operations on the Premises are paid from reserves, bond or insurance proceeds, or other funds maintained by the parent organization of Tenant for the payment of claims in the administration of the program; (4) claims arising from Tenant's operations on the Premises are not paid by or charged to the account of Tenant; (5) Tenant provides, with respect to its operations on the Premises, annual notice to District for the preceding 12-month period of (a) the total incurred on open claims; (b) claim count, (c) amount of claims paid; and (d) descriptions of claims paid that exceed \$100,000; and (6) the program complies with all applicable laws.

Tenant's right to participate in a self-insurance program as described above does not extend to any assignee of Tenant upon assignment of the Lease, except upon the written approval of District, to be given or withheld in its sole discretion.

Exhibit C

Appraisal Protocols

The following protocols are agreed between District and Tenant with respect to an Appraisal provided pursuant to the Lease.

1. Selection of Original Appraisers. Within thirty (30) days after a request for an Appraisal, District and Tenant shall each select a Qualified Appraiser (once selected, the “**Original Appraisers**”). Each Party shall notify the other Party in writing within such 30-day period of its Qualified Appraiser.
2. Appraisal Instructions. District and Tenant shall agree upon the appraisal instructions that will be used by the Original Appraisers. The instructions will require that the Original Appraisers determine the applicable appraised value based on the arms’-length, fair market value of the Improvements or the fair market rent of the Land, as applicable, for use as a hospital and the method for which rent adjustments for the Land should be determined. The instructions shall require that the Appraisal not take into account the value of (i) the Leasehold Estate, (ii) Tenant’s Personal Property, or (iii) Tenant’s business operations on the Leased Premises. The instructions shall require that the Appraisal account for any reduction in value due to encumbrances of record which are not Permitted Exceptions and not removed or corrected by District in accordance with Section 3.5.6 of the Lease.
3. Appraised Value.
 - a. Each Original Appraiser shall provide District and Tenant with a copy of its complete, written self-contained appraisal report containing its determination of the Appraised Value and its opinion of the appropriate method for determining annual rent adjustments for the Land within ninety (90) days after the Original Appraiser has been engaged (each, an “**Original Appraisal**”).
 - b. If the opinions of value set forth in the Original Appraisals are within five percent (5%) or less of each other, the Appraised Value shall be deemed to be the numerical average of opinions of value set forth in the Original Appraisals.
 - c. If the opinions of value set forth in the Original Appraisals are more than five percent (5%) apart, the Original Appraisers shall, within ten (10) days after both Original Appraisals have been delivered to both Parties, appoint a third Qualified Appraiser (the “**Third Appraiser**”). If the Original Appraisers cannot agree on a Third Appraiser within such ten (10) day period, either District or Tenant may request that the head of the Washington D.C. Chapter of the American Institute of Real Estate Appraisers (or any successor thereto or other mutually acceptable recognized professional association of real estate appraisers) designate a Qualified Appraiser to act as the Third Appraiser, who shall be engaged by the Parties to perform an appraisal using the same instructions provided to the Original Appraisers. The Third Appraiser may be provided any of the information available

from either of the Original Appraisers; provided, however, the Third Appraiser shall not be informed of the opinions of value determined by either of the Original Appraisers.

- d. If there is a Third Appraiser, he or she shall, within sixty (60) days after being engaged, deliver a complete, written self-contained appraisal (the “**Third Appraisal**”) to the Original Appraisers, with a copy to District and Tenant.
 - e. If the opinion of value set forth in the Third Appraisal is within ten percent (10%) of one of the opinions of values set forth in the Original Appraisals, then the Appraised Value shall be deemed to be the numerical average of opinions of value set forth in the Third Appraisal and the Original Appraisal that is within ten percent (10%) of the Third Appraisal.
 - f. If the opinion of value set forth in the Third Appraisal is not within ten percent (10%) of the opinion of value set forth in either of the Original Appraisals, then the Parties shall meet and confer to set the Appraised Value, which such Appraised Value shall be an amount between the two highest opinions of values offered by the Original Appraisers and Third Appraiser. To the extent the Parties, in each of their sole and absolute discretions, cannot agree on an Appraised Value, then the Appraised Value shall be undetermined and Tenant shall have the right to restart the process identified herein to try to determine an Appraised Value.
 - g. Notwithstanding the foregoing, if the Original Appraisers’ opinions differ as to the appropriate method for determining annual adjustments to the rent for the Land, then the Appraised Value shall be undetermined and Tenant shall have the right to restart the process identified herein to try to determine an Appraised Value.
4. Responsibility for Costs. Tenant agrees to pay all costs associated with any Appraisals, including fees charged by any Original Appraiser or Third Appraiser, whether such party is selected individually by District or Tenant. Tenant shall pay to District in accordance with Section 4.5, within fifteen (15) days after Notice of such amounts from District, the costs incurred by District for District’s Qualified Appraiser.

Exhibit D

Calculation of Participation Rent

Tenant shall be obligated to pay to District Participation Rent based on the percentage of Tenant's gross revenues received in connection with its ownership and/or lease, as applicable, or operation of the Leased Premises in excess of Tenant's earnings before interest, taxes, depreciation, and amortization ("**EBITDA**") in connection with Tenant's ownership and/or operation of the Leased Premises. For each year EBITDA meets or exceeds the margin percentage set forth in the first column of the schedule below, Tenant shall pay to District a share of its gross revenues in accordance with the corresponding percentage indicated in the second column of the schedule below as Participation Rent. The Parties acknowledge the schedule below is graduated with each of the six tiers of the schedule only applying to the incremental amount that falls in that applicable tier of the schedule.

Tiers	EBITDA Margin Percentage	Share of the Gross Revenues Above the EBITDA Margin Percentage Paid to District as Participation Rent
1.	0 – 12.0%	0%
2.	>12.0% <= 18.0%	25%
3.	>18.0% <= 20.0%	35%
4.	>20.0% <= 22.0%	45%
5.	>22.0% <= 25.0%	50%
6.	>25.0%	75%

Tenant's calculation of EBITDA shall be prepared on a consistent basis with the methodology utilized by UHS in its public financial disclosures. At all times, EBITDA shall be calculated by Tenant on a consistent basis with the EBITDA calculation used by UHS as of the Execution Date. Further, in its calculation of EBITDA, Tenant shall allocate corporate overhead expenses associated with the Hospital and the Parking Facility in accordance with the operating, definitive, or other similar agreement between George Washington University Hospital and UHS in effect as of the Execution Date.

Exhibit E

List of Environmental Reports

- Phase I Environmental Site Assessment (Draft Report), St. Elizabeth's Hospital, East Campus, 2700 Martin Luther King Jr. Avenue SE, Washington D.C., April 2003, by Environmental Resources Management.
- Phase II Environmental Site Assessment, St. Elizabeth's 801 Shelter Relocation Project, dated November 27, 2018, by Hillis-Carnes Capitol Services, PLLC.
- Preliminary Geotechnical Engineering Study, St. Elizabeth's Shelter Relocation, Washington, DC, December 3, 2018, by Hillis-Carnes Capitol Services, PLLC.

Exhibit F

Early Termination Payment Schedule

Last Anniversary of Commencement Date	Early Termination Payment
10 Years	\$22,200,000.00
11 Years	\$22,200,000.00
12 Years	\$22,200,000.00
13 Years	\$22,200,000.00
14 Years	\$22,200,000.00
15 Years	\$15,000,000.00
16 Years	\$15,000,000.00
17 Years	\$15,000,000.00
18 Years	\$15,000,000.00
19 Years	\$15,000,000.00
20 Years	\$5,000,000.00
21 Years	\$5,000,000.00
22 Years	\$5,000,000.00
23 Years	\$5,000,000.00
24 Years	\$5,000,000.00
25 Years or More	\$0

Exhibit G

Payment Instructions

[to be attached]

Exhibit H
Form of Guaranty

[see attached]

GUARANTY

THIS GUARANTY (“**Guaranty**”) dated as of _____, 2020 (the “**Effective Date**”), of **UNIVERSAL HEALTH SERVICES, INC.**, a Delaware corporation (“**Guarantor**”), is for the benefit of and delivered to the **DISTRICT OF COLUMBIA**, a municipal corporation (“**District**”).

RECITALS

WHEREAS, District is the fee simple owner of the parcel of real property located in the District of Columbia and known for assessment and taxation purposes as Lot 0859, Square 5868-S (the “**Land**”);

WHEREAS, simultaneously herewith, District, UHS East End Sub, LLC, a wholly-owned subsidiary of Guarantor (including any permitted successors or assigns, the “**Operating Entity**”), and UHS Building Solutions, Inc., a wholly-owned subsidiary of Guarantor (including any permitted successor or assign, the “**Development Entity**”) entered into a Collaboration Agreement (as may be amended in accordance with its terms, the “**Collaboration Agreement**”) outlining a collaboration between the District, the Operating Entity, and the Development Entity with respect to the construction and operation of a Hospital and Parking Facility (as such terms are defined in the Collaboration Agreement) and other related matters;

WHEREAS, simultaneously herewith, District and Development Entity entered into a Development Agreement (as may be amended in accordance with its terms, the “**Development Agreement**”) pursuant to which District contracted with Development Entity to provide program management services in connection with the design, construction, furnishing, equipping, activation, and commissioning of the Hospital and supporting facilities, and Development Entity wishes to provide those services on the terms and conditions set forth therein;

WHEREAS, simultaneously herewith, District and Operating Entity entered into a Hospital Operations Agreement (as may be amended in accordance with its terms, the “**Hospital Operations Agreement**”) pursuant to which Operating Entity agreed to operate the Hospital and Parking Facility in accordance with the terms and conditions set forth therein;

WHEREAS, simultaneously herewith, District and Operating Entity as the “**Tenant**” entered into a Lease Agreement (as may be amended in accordance with its terms, the “**Lease Agreement**”) pursuant to which District agreed to lease to Operating Entity and Operating Entity agreed to use, operate, maintain, and improve the Hospital and Parking Facility in accordance with the terms and conditions of the Lease Agreement and the Hospital Operations Agreement during the time the Hospital Operations Agreement is in effect;

WHEREAS, Operating Entity is a subsidiary of Guarantor;

WHEREAS, it is the intention of Guarantor, and a condition to the willingness of District to enter into the Collaboration Agreement, Development Agreement, Hospital Operations Agreement, and Lease Agreement (collectively, the “**Guaranteed Agreement**”) that Guarantor guaranties all of the payment and performance obligations of Operating Entity and the

Development Entity (Development Entity shall for the purposes of this Guaranty be deemed to be included in the definition of “Operating Entity”) under the Guaranteed Agreement, as set forth in this Guaranty;

WHEREAS, Guarantor has substantial direct or indirect economic and/or ownership interest in Operating Entity and will derive substantial benefit from the District’s lease of the Hospital and Parking Facility to Operating Entity and Operating Entity’s operation of the Hospital and Parking Facility;

NOW, THEREFORE, in consideration of the premises and an inducement for and in consideration of the agreement of District entering into and performing its obligations under the Guaranteed Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, hereby agrees and covenants to District as follows:

1. Guarantor does hereby irrevocably guarantee (i) the full and prompt payment by Operating Entity of all of Operating Entity’s payment obligations to District under the Guaranteed Agreement, including, without limitation, payment obligations arising as a result of a breach or failure by Operating Entity to perform any of its respective obligations at the times and in the manner provided in the Guaranteed Agreement, and (ii) the full and timely performance of all obligations of Operating Entity under the Guaranteed Agreement, including, without limitation, obligations of Operating Entity to operate the Hospital and Parking Facility pursuant to the terms of the Hospital Operations Agreement (collectively (i) and (ii) referred to as “**Guaranteed Obligations**”).

2. Intentionally Deleted.

3. This Guaranty may only be assigned, amended or modified by a writing signed by the parties hereto and any successors and assigns of District’s rights under the Guaranteed Agreement.

4. Guarantor’s obligation of payment pursuant to this Guaranty is an absolute, primary, unconditional, and irrevocable guaranty of payment and not of collection and, except with respect to the performance obligations set forth in Section 1(ii), Guarantor shall have no obligation to perform under the Guaranteed Agreement. This Guaranty shall remain in full force and effect until all of the obligations of the Operating Entity under the Guaranteed Agreement to District have been satisfied in full. Guarantor acknowledges that District has executed the Guaranteed Agreement in material reliance upon this Guaranty. District shall have no obligation to assert any claim or demand or to enforce any remedy under the Guaranteed Agreement or to proceed first against Operating Entity or any other person or entity, or resort to any security or make of any effort to obtain payment or performance by Operating Entity or any other person or entity. No delay or omission by District to exercise any right under this Guaranty shall impair any right, nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Guaranty shall be deemed a waiver of any other breach or default.

5. If Operating Entity fails or refuses to pay or perform any Guaranteed Obligation when due (subject to any applicable notice and/or cure period of the Operating Entity pursuant to

the Guaranteed Agreement) and District elects to exercise its rights under this Guaranty, District shall make demand upon Guarantor (a “**Demand**”). Such Demand shall be in writing, shall refer to this Guaranty, shall specifically identify Operating Entity, shall reasonably and briefly specify in what manner and what amount Operating Entity has failed to pay or what obligation Operating Entity has failed to perform and provide an explanation of why such payment or performance is due, with a specific statement that District is calling upon to pay or to perform or to cause performance in accordance with this Guaranty. A Demand satisfying the foregoing requirements when delivered to Guarantor shall be required in respect of any Guaranteed Obligation before Guarantor is required to pay or to perform or to cause performance of such Guaranteed Obligation in accordance with this Guaranty and shall be deemed sufficient notice to Guarantor that it must pay or perform or cause performance of such Guaranteed Obligation. A single written Demand that complies with the terms of this Guaranty shall be effective as to any specific failure to pay or perform during the continuance of such failure to pay or perform, until Operating Entity, or Guarantor, has fully cured such failure to pay or perform, and additional written demands concerning such failure to pay or perform shall not be required until such failure to pay or perform is fully cured.

6. The liability of Guarantor under this Guaranty shall be absolute, primary (with respect to payment), unconditional, and irrevocable, irrespective of: (a) any change in time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other amendment to, modification of (including change orders), waiver of, or any consent to departure from, the Guaranteed Agreement; (b) any change in ownership of Guarantor or Operating Entity; (c) any bankruptcy, insolvency, or reorganization of, or other similar proceedings involving Operating Entity; (d) any assignment or transfer of the Guaranteed Agreement by the Operating Entity (excluding when a replacement guaranty is provided by a new guarantor approved by District in accordance with the terms of Section 4.8 of the Lease Agreement); or (e) any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. Guarantor’s obligations under this Guaranty shall not be released, impaired, reduced or otherwise affected by, and shall continue in full force and effect notwithstanding the occurrence of, any event, including, without limitation, the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, dissolution, or lack of authority of the Operating Entity whether now existing or hereafter arising.

7. Nothing in this Guaranty diminishes or waives Operating Entity rights, setoffs, counterclaims, and other defenses to which Operating Entity is or may be entitled under the Guaranteed Agreement.

8. If a claim is made upon District at any time for repayment or recovery of any amounts received by District from any source on account of any of the Guaranteed Obligations and District, pursuant to a court order or applicable law, repays or returns any amounts so received, then Guarantor shall remain liable for the amounts so repaid (such amounts being deemed part of the Guaranteed Obligations) to the same extent as if such amounts had never been received by District, notwithstanding any termination hereof or the cancellation of any instrument or agreement evidencing any of the Guaranteed Obligations.

9. Guarantor hereby irrevocably, unconditionally, and expressly waives, to the fullest extent permitted by applicable law, promptness, diligence, presentment, notice of acceptance, and other notice (except as for any notice required pursuant to the terms of this Guaranty) with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that District protect, secure or perfect any security interest, or exhaust any right or first proceed against Operating Entity or any other person or entity.

10. District may, without notice to Guarantor and without affecting in any way its rights hereunder:

- a. modify or otherwise change any terms of all or any part of the Guaranteed Agreement or grant any extension(s) or renewal(s) for any period or periods of time for payment or performance or grant any other indulgence(s) with respect thereto and effect any release, compromise or settlement with respect thereto;
- b. enter into any agreement of forbearance with respect to all or any part of the payment or performance due under the Guaranteed Agreement, or with respect to all or any part of the collateral securing the payment and performance by Operating Entity or Guarantor of its obligations, and change the terms of any such agreement;
- c. enter into any agreement or agreements with the Operating Entity concerning then existing or additional obligation; and/or
- d. release or effect any settlement or compromise with respect to the payment or performance of the Guaranteed Agreement by Operating Entity or any other party primarily or secondarily liable for the payment or performance of the Guaranteed Agreement.

Notwithstanding anything to the contrary contained in the foregoing, to the extent that any of the events referred to above directly reduces the extent or nature of, or eliminates any or all of, the Guaranteed Obligations, Guarantor shall be entitled to the benefit of such reduction in, or elimination of, the Guaranteed Obligations.

11. Subject to Paragraphs 6, 8, and 9 hereof, Guarantor hereby reserves to itself all rights, setoffs, counterclaims, and other defenses to which Operating Entity is or may be entitled to under the Guaranteed Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution, or liquidation of Operating Entity.

12. Guarantor represents and warrants to District as of the Effective Date that:

- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to perform.
- b. The execution, delivery, and performance of this Guaranty by Guarantor has been and remains duly authorized by all necessary action, corporate or otherwise, and do not

- contravene any provision of its certificate of incorporation or bylaws or any law, regulation or contractual restriction binding on it or its assets.
- c. All consents, authorizations, approvals, registrations, and declarations required for the due execution, delivery, and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
 - d. This Guaranty constitutes the legal, valid, and binding obligation of Guarantor, enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights or by general equity principles.
 - e. Except as disclosed by Guarantor to District, no actions, suits, or proceedings are pending or, to, as applicable, Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change in the financial condition of Guarantor (in comparison to any state of affairs existing before the Effective Date) or adversely affect the ability of Guarantor to perform, or of District to enforce, any provision of this Guaranty.
 - f. Guarantor is not insolvent (as such term is defined or determined for purposes of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330), as amended or recodified, or any other bankruptcy law, and the execution and delivery of this Guaranty will not make Guarantor insolvent.
 - g. Neither this Guaranty nor any certificate or written statement furnished to District by or on behalf of Guarantor contains any untrue statement of a material fact or intentionally, or knowingly, omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading.
 - h. There are no conditions precedent to the effectiveness of this Guaranty.
 - i. Guarantor is not a Prohibited Person (as such term is defined in the Lease Agreement).
 - j. Prior to the Effective Date, Guarantor provided to District (i) a certification from the Chief Financial Officer of Guarantor confirming the ability of Guarantor to meet its obligations under this Guaranty; and (ii) unless not otherwise publicly available through SEC's EDGAR service, Guarantor's most recent audited annual financial statements (including without limitation, a balance sheet, income statement and statement of cash flows, and any footnotes related thereto), all prepared in accordance with generally accepted accounting principles.

All representations, warranties, and covenants made by Guarantor herein shall be considered to have been an inducement to and relied upon by District in consummating the

transaction contemplated by the Guaranteed Agreement and shall survive the delivery to District of this Guaranty until payment of all Guaranteed Obligations has been received in full by District, regardless of any investigation made or not made by or on behalf of District.

13. This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by District and its successors and permitted assigns under the Guaranteed Agreement. Guarantor's liability under this Guaranty shall remain in full force and effect until the earlier of (a) (i) receipt by District of full payment of all Guaranteed Obligations under the Guaranteed Agreement in accordance with the terms hereof and thereof and (ii) performance in full of all Guaranteed Obligations under the Guaranteed Agreement in accordance with the terms hereof and thereof or (b) release by District.

14. Guarantor subordinates and shall not assert any claim, right, or remedy that Guarantor may now have or hereafter acquire against Operating Entity, or any of its assets or property that arises from the performance by Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right, or remedy that District may have against Operating Entity or any collateral for the Guaranteed Obligations that District now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law, or otherwise until such time as Operating Entity pays such Guaranteed Obligations in full.

15. Upon the occurrence and during the continuance of (a) any failure by Guarantor to pay the Guaranteed Obligations within twenty (20) days after the date that Guarantor receives written notice from District that Guarantor owes District such Guaranteed Obligations as provided in this Guaranty, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts generally as they mature, (d) a general assignment by Guarantor for the benefit of creditors that is not dismissed or stayed within one hundred twenty (120) days filing, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed or stayed within one hundred twenty (120) days after receipt of notice of filing, (f) the falsity in any material respect of any representation made to District by Guarantor in this Guaranty, or (g) any other default by Guarantor of any other obligations owed to District by Guarantor in this Guaranty which is not remedied within the applicable notice and/or cure period (a "**Guarantor Default**"), District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty in accordance with the terms hereof, independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations as to Operating Entity, and it shall not be necessary for District to marshal assets in favor of Operating Entity, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty in accordance with the terms hereof. Additionally, Guarantor agrees that during the continuance of any Guarantor Default, District may, without the consent of or notice to Guarantor take or refrain from taking such other action to enforce the provisions of this Guaranty against Guarantor as it may from time to time determine in its sole discretion as to any obligations then unperformed.

16. This Guaranty shall be governed by and enforced in accordance with the law of the District of Columbia without the application of principles of conflict of law which would apply the substantive law of any other jurisdiction. Each of Guarantor and District hereby expressly waives any right to a trial by jury in any action or proceeding to enforce or defend any rights (a) under this Guaranty or the Guaranteed Agreement, including any amendments thereto, or (b) arising from any relationship existing in connection herewith or therewith, and agrees that any such action or proceeding shall be tried before a court and not before a jury.

17. All demands, notices or communications to Guarantor shall be in writing and shall be directed by registered or certified mail or overnight delivery service to:

Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attn: General Counsel – Matthew Klein

or such other address as Guarantor shall from time to time specify in writing to District.

18. Notwithstanding anything to the contrary contained in this Guaranty, the maximum aggregate amount that Guarantor shall incur in connection with the payment and performance of any and all Guaranteed Obligations shall not exceed the total sum equal to the Maximum Amount (as defined below). As used in this Section, the term “**Maximum Amount**” shall mean (i) from the Effective Date until the fifth (5th) anniversary of the Effective Date, the amount of ONE-HUNDRED MILLION AND NO/100 DOLLARS (\$100,000,000.00) and (ii) after such fifth (5th) anniversary of the Effective Date, the amount of SEVENTY-FIVE MILLION AND NO/100 DOLLARS (\$75,000,000.00).

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered by its duly authorized officer, and District accepts and agrees to the terms hereof, as of the date first written above.

GUARANTOR:

UNIVERSAL HEALTH SERVICES, INC.

By: _____
Name:
Title:

DISTRICT:

THE DISTRICT OF COLUMBIA

By: _____
Name:
Title:

Exhibit I

Additional Tenant Requirements

Branding. At all times, the Hospital shall be branded in a consistent manner with the Foggy Bottom Hospital and the Foggy Bottom Facility, or any successors thereto, such that, for example, if the Foggy Bottom Hospital is known as “George Washington University Hospital” or “GW Health Hospital” then the Hospital shall be known, respectively, as “George Washington University Hospital at St. Elizabeths”, or “GW Health Hospital at St. Elizabeths”, or such other name that includes “George Washington University” or “GW Health”, as the case may be, in the title name and not as a modifier indicating its affiliation with the Foggy Bottom Hospital and the Foggy Bottom Facility, or any successors thereto. Tenant shall use best efforts to obtain and maintain any and all rights necessary to name and brand the Hospital in a manner consistent with the Foggy Bottom Hospital, including obtaining and maintaining rights to the name and brand “George Washington University” or “GW Health” and shall promptly notify the District in writing if Tenant is unable to obtain or maintain these branding and naming rights.

Exhibit J

Handover Process and Handover Standards

During the Handover Process, Tenant shall perform such transition assistance as set forth below and as reasonably requested by District that are consistent with the nature of the operations then performed by Tenant at the Hospital and Parking Facility to transition the Leased Premises to District and/or a new tenant and/or hospital operator chosen by District, in its sole discretion (which operator may be District).

Section 1.1. Requirements of Handover Process

Section 1.1.1 The Parties shall use reasonable efforts such that the Handover Process will be implemented in a manner minimally disruptive to the Parties' respective programs, patients, and personnel, as applicable, and in compliance with all Applicable Laws, regulations, and accreditation requirements, and shall include, without limitation, the transition, as applicable, of the hospital assets (excluding Tenant's Personal Property unless the same is purchased by District in accordance with the terms of the Lease), hospital licenses, operations, and employees of the Hospital to the new operator, and any other actions as District or Tenant determines are reasonably necessary to transfer the Hospital operations (including with respect to transfer of the Parking Facility, Parking Facility assets, Parking Facility operations, and Parking Facility employees) to the new operator.

Section 1.1.2 Tenant shall reasonably cooperate with and assist District, at Tenant's sole cost and expense, in the transition to a new operator for the Hospital and Parking Facility selected by District and transitioning the hospital services, hospital assets (excluding Tenant's Personal Property unless the same is purchased by District in accordance with the terms of the Lease), hospital licenses, and employees of the Hospital along with the Parking Facility, Parking Facility assets, Parking Facility operations, and Parking Facility employees to the new operator consistent with the Handover Process set forth herein. In furtherance of such cooperation, Tenant shall provide District, a prospective operator, and/or the new operator reasonable access to the Hospital and Parking Facility, staff, and to records in connection with the operations of the Hospital and Parking Facility related to the transition of the Hospital and Parking Facility operations. Tenant shall not be obligated to provide financial statements and any other records that contain confidential or proprietary information unless the recipient of such statements and records signs a nondisclosure agreement (the "NDA") on such terms as Tenant and such recipient may agree, which NDA, if District is to be a recipient of such financial statements and records, shall include a process by which the parties would address any public requests for documents pursuant to the District of Columbia's Freedom of Information Act of 1976, as amended (the "Act"), and which NDA shall state that any such financial statements, the disclosure of which would result in substantial harm to Tenant's competitive position, are exempt from disclosure under the Act unless otherwise agreed to by the Parties. Tenant shall release any employees, contractors, agents, vendors, or service providers of the Hospital or Parking Facility from any non-competes or restrictive covenants applicable to them in favor of Tenant or its Members or Affiliates under any agreements or arrangement pertaining to the Hospital or Parking Facility, such that they may continue to perform services for or at the Hospital or Parking Facility after completion of the Handover Process.

Section 1.1.3 Upon District's request, Tenant shall reasonably cooperate with the new operator selected by District in connection with the Handover Process. During the Handover Process, which shall not exceed an aggregate time period of eighteen (18) months after the Handover Process Commencement Date (as defined below) plus an extension of up to three (3) months after the expiration of such 18-month period if the requirements of the Approved Transition Plan (as defined herein) are not reasonably anticipated to be satisfied prior to the end of such 18-month period, which extension may be exercised by either Party upon Notice to the other Party delivered not less than thirty (30) days prior to the expiration of such 18-month period (collectively, the "**Handover Process Period**"), the services set forth above and transition assistance services shall be materially of the same quality, level of performance, and scope as provided prior to termination, but not less than as required under the Hospital Operations Agreement, if the Hospital Operations Agreement is then in effect. The date that the Handover Process is completed in accordance with the terms of the Lease is referred to as the "**Handover Date**", which Handover Date shall in all events occur on or before the expiration of the Handover Process Period. Notwithstanding anything herein to the contrary, the District's failure to obtain those Third-Party Consents (as defined herein) that, pursuant to the Approved Transition Plan are the responsibility of the District, shall not delay the Handover Date nor prevent Tenant from completing the Handover Process; provided, however, that if under Applicable Law Tenant cannot complete the Handover Process because such Third-Party Consents have not been obtained by District, then Tenant, in its sole and absolute discretion, may elect to close operations of the Hospital upon conclusion of the Handover Process Period.

Section 1.2. Commencement of Handover Process

Section 1.2.1 The obligations of Tenant to undertake the Handover Process shall begin on the Handover Process Commencement Date. For purposes of this Exhibit, the "**Handover Process Commencement Date**" shall be the date that is: (a) for the expiration of the Lease Term, the date that is at least eighteen (18) months prior to the Expiration Date; (b) for a termination that is the result of Tenant exercising its option to terminate in accordance with Section 3.2.1 of the Lease, the date of Tenant's Notice to District in accordance with the terms thereof; (c) for a termination by District in accordance with Section 9.2.2 of the Lease, the date of District's Notice to Tenant providing Tenant notice that the Lease has been terminated by District due to an uncured Event of Default by Tenant; (d) for a termination by Tenant in accordance with Section 9.8 of the Lease, the date of Tenant's Notice to District providing District notice that the Lease has been terminated by Tenant due to an uncured default by District; (e) for a termination of the Lease in accordance with Section 10.3.4 of the Lease, the date of District's delivery to Tenant of the Termination Notice; (f) for a termination of the Lease in accordance with Section 3.2(vi), the date of Tenant's Notice to District providing District notice that the Lease has been terminated by Tenant due to an uncured "Material Breach" (as such term is defined in the Hospital Operations Agreement) by District following the applicable notice and cure period; (g) for a termination of the Lease in accordance with Section 3.2.2, the date of District's notice to the "Program Manager" (as such term is defined in the Development Agreement) that the Development Agreement has been terminated by District to the extent that the Ambulatory Facility has been completed and is operating; or (h) for a termination of the Lease in accordance with Section 3.2.3 to the extent that the Ambulatory Facility and/or the Inpatient Hospital has been completed and is operating, the

date of District's Notice to Tenant terminating the Lease thereunder. Notwithstanding anything to the contrary contained in this Exhibit J, if the Lease is terminated pursuant to the terms of Section 3.2(vi) because of a failure of District to comply with Section 6.1.2 of the Hospital Operations Agreement, Section 3.2.2 or Section 3.2.3 where neither the Ambulatory Facility nor the Inpatient Hospital is completed and operating, Section 12.6.5, Section 14.1, or Section 14.2 of the Lease, then Tenant shall have no obligation to perform any of the Handover Process in connection with the termination of the Lease.

Section 1.2.2. Within thirty (30) days after the Handover Process Commencement Date, Tenant and District shall jointly request that a mutually acceptable environmental consultant prepare a baseline environmental survey for the Leased Premises (the "**Baseline Environmental Survey**"). The Baseline Environmental Survey will be prepared at Tenant's expense. In the event the Baseline Environmental Survey identifies or discloses any environmental contamination affecting the Leased Premises for which the Tenant is responsible under the Lease, then the terms of the Lease shall govern and control with respect to the obligations of the parties concerning such environmental contamination.

Section 1.2.3. Within thirty (30) days after the Handover Process Commencement Date, District and Tenant shall mutually approve the appointment of (i) an independent third party engineer (the "**Handover Engineer**") and (ii) an independent third party transition manager (the "**Handover Manager**"), who, consistent with their separate, agreed-upon scopes of work as described herein, will oversee the Handover Process. The scope of work of the Handover Engineer (the "**Engineer's Scope of Work**") and the allocation of the cost of the Handover Engineer shall be defined by the mutual agreement of the Parties. The scope of work of the Handover Manager (the "**Manager's Scope of Work**") and the allocation of cost of the Handover Manager shall be defined by the mutual agreement of the Parties, provided that the Manager's Scope of Work shall include, among such other responsibilities as the Parties mutually agree, oversight of the process and timeline for receipt of notice, consent, or approval of applicable regulatory agencies and other third parties necessary to complete the Handover Process (collectively, the "**Third-Party Consents**"), including review of the Transition Plan regarding the designation of each Party responsible for obtaining such Third-Party Consents, and such other components of the Handover Process that are not within the Engineer's Scope of Work. In the event that, within thirty (30) days after the Handover Process Commencement Date, District and Tenant cannot mutually agree as to the selection of the Handover Engineer or the Handover Manager, the Engineer's Scope of Work or the Manager's Scope of Work, the allocation of the cost of the Handover Engineer or the allocation of costs of the Handover Manager, then the Parties agree to resolve any such dispute in accordance with the terms of Section 1.11 below.

Section 1.3. Handover Kick-off Meeting. Within thirty (30) days after the Handover Process Commencement Date, District and Tenant shall meet to discuss the orderly transfer of the Leased Premises to District (the "**Handover Kick-off Meeting**"). The objective of the Handover Kick-off Meeting will be for the Parties to agree on the specific procedures and milestones for the Handover Process, including the timeline and milestones to obtain the Third-Party Consents. Tenant shall prepare minutes of the Handover Kick-off Meeting and submit such minutes to District. In the event that District and Tenant cannot mutually agree as to the timeline and

milestones for the Third-Party Consents, then the Parties agree to resolve any such dispute in accordance with the terms of Section 1.11 below.

Section 1.4. Initial Handover Inspection. Within ten (10) Business Days after the Handover Kick-off Meeting, Tenant shall arrange access for the Handover Engineer to carry out an inspection and an evaluation of the Leased Premises (the “**Initial Handover Inspection**”). The Handover Engineer shall produce a written report on its findings as to the condition of the Leased Premises and the Total Personal Property and the works of any renewal, reconstruction, or repair (“**Renewal Works**”) proposed by the Handover Engineer to be carried out on the Leased Premises in order for the Leased Premises to satisfy the Handover Standards, including the remediation of any environmental contamination disclosed in the Baseline Environmental Survey that is Tenant’s responsibility under the terms of the Lease. The Handover Engineer shall furnish to District and Tenant its written report as soon as possible after it has completed the Initial Handover Inspection, but, in any event, within fifteen (15) days after the Initial Handover Inspection. Tenant and District shall have a period of thirty (30) days following the receipt of such report to raise any objections thereto relating to the Initial Handover Inspection and/or the proposed Renewal Works (the “**Objections**”). In the event that any such Objections are not amicably resolved by the Parties within a period of thirty (30) days from the date the Objections were raised by Tenant or District, then within five (5) Business Days after the expiration of such 30-day period, either Tenant or District may refer the matter to an independent expert mutually acceptable to the Parties, each exercising reasonable discretion (the “**Independent Expert**”). If the Parties cannot agree as to the selection of the Independent Expert within such 5-Business Day period, the Parties agree to resolve any such dispute in accordance with the terms of Section 1.11 below. The Parties shall use reasonable efforts to cause the Independent Expert to render its determination not later than thirty (30) days after being appointed. The decision of the Independent Expert regarding the resolution of the Objections shall be binding on the Parties. To the extent necessary, the Handover Engineer shall update its written report to address any Objections resolved by the Parties or the Independent Expert. Any proposed Renewal Works to which neither Party objects in accordance of this Section 1.4 (including resolution of any Objections by the Parties or the Independent Expert) is referred to herein as the “**Approved Renewal Works**”, which Approved Renewal Works shall be memorialized in the Handover Engineer’s revised written report.

Section 1.5. Transition Plan.

Section 1.5.1. By no later than ninety (90) days after the Handover Process Commencement Date, Tenant shall submit to District, for its review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed, its proposal for a comprehensive transition plan outlining the particulars of all responsibilities and obligations of the Parties regarding the transfer of the Leased Premises and any Tenant’s Personal Property that is purchased by District in accordance with Section 2.5.4 of the Lease to District or that is leased by Tenant that District elects to assume in accordance with Section 2.5.4 of the Lease (the “**Transition Plan**”). District and Tenant shall each have the right to submit the Transition Plan to the Handover Manager for its review and comment. Such Transition Plan shall include, among other things, the Handover Process set forth herein, including the plan and process to make and/or receive Third-Party Consents and the designation of each Party responsible for obtaining such Third-Party Consents. In addition, Tenant shall provide to District such other information as may be

reasonably requested by District or Handover Manager and/or as may be reasonably necessary or appropriate to facilitate the transfer of the Leased Premises and any Tenant's Personal Property that is purchased by District or that is leased by Tenant and assumed by District in accordance with Section 2.5.4 of the Lease.

Section 1.5.2. District shall provide Tenant its comments to such proposed Transition Plan no later than thirty (30) days after District's receipt of the same. Handover Manager shall provide any comments it has to the Transition Plan to both Tenant and District no later than thirty (30) days after Handover Manager's receipt of the same. Tenant shall incorporate District's and Handover Manager's comments that are reasonably acceptable to Tenant into a revised version of the Transition Plan and submit the same within fifteen (15) days after its receipt of District's or Handover Manager's comments to District for its approval of the revised Transition Plan, which approval shall not be unreasonably withheld, conditioned, or delayed. In the event that District notifies Tenant that District disapproves any specific aspect of the revised version of the Transition Plan, Tenant shall prepare and resubmit for approval by District, which approval shall not be unreasonably withheld, conditioned or delayed, as soon as practicably possible, a revised proposed Transition Plan incorporating District's comments that are reasonably acceptable to Tenant. The Transition Plan, as mutually approved by Tenant and District, is referred to herein as the "**Approved Transition Plan**". In the event that District and Tenant cannot mutually agree to an Approved Transition Plan, then the Parties agree to resolve any such dispute in accordance with the terms of Section 1.11 below.

Section 1.6. Finalizing Handover Process. Tenant, District, the Handover Manager, and the Handover Engineer shall again meet within ten (10) days after the Handover Engineer updates its written report with the Approved Renewal Works, if any, in order to finalize the detailed procedures and milestones for the Handover Process. Thereafter, Tenant, District, the Handover Manager, and the Handover Engineer shall meet at regularly scheduled monthly meetings (at times that are agreed between Tenant and District) during the Handover Process Period to discuss and review any issues that arise relating to the Handover Process and/or the fulfillment of any Approved Renewal Work and any applicable Additional Renewal Work (as defined below). Tenant shall prepare minutes of all such meetings and submit such minutes to District.

Section 1.7. Performance of Handover Process. Tenant shall diligently undertake and complete the actions identified in the Approved Transition Plan for which it is responsible at its own cost and expense. The District shall diligently undertake and complete the actions identified in the Approved Transition Plan for which it is responsible at its own cost and expense. Throughout the Handover Process, the Handover Engineer shall supervise Tenant's fulfillment of any Approved Renewal Works and any components of the Approved Transition Plan that are within the Engineer's Scope of Work. Tenant shall (i) provide the Handover Engineer and/or the Handover Manager such access, during normal business hours, to the Leased Premises as they may reasonably request and (ii) reasonably cooperate with the Handover Engineer and the Handover Manager throughout the Handover Process. The Parties shall reasonably cooperate with the Handover Manager with respect to those components of the Approved Transition Plan that are within the Manager's Scope of Work.

Section 1.8. Acceptance or Refusal.

Section 1.8.1. Final Handover Inspection. Not later than thirty (30) days prior to the expiration of the Handover Process Period, Tenant and District shall, together with the Handover Engineer, and the Handover Manager, conduct a joint inspection of the Leased Premises and review of the Third-Party Consents and other actions within the Approved Transition Plan (a “**Final Handover Inspection**”) to determine whether (i) Tenant has fulfilled the Approved Transition Plan, (ii) Tenant has completed the Approved Renewal Works, if any, and (iii) an event has first occurred subsequent to the Initial Handover Inspection that has caused the Leased Premises to fail to meet the Handover Standards for which Tenant is responsible to remedy under the terms of the Lease (“**Additional Renewal Work**”). Within ten (10) days after the Final Handover Inspection, the Handover Engineer shall either issue to Tenant and District a Handover Certificate certifying that the (i) Tenant has fulfilled the components of the Approved Transition Plan that are within the Engineer’s Scope of Work, (ii) Tenant has completed the Approved Renewal Works, and (iii) there is no existing Additional Renewal Work to be performed by Tenant (a “**Handover Engineer’s Certificate**”) or notify Tenant and District in writing of its decision not to issue a Handover Engineer’s Certificate and state the reason for such decision (a “**Handover Engineer’s Refusal Notice**”). Within ten (10) days after the Final Handover Inspection, the Handover Manager shall either issue to Tenant and District a Handover Manager’s Certificate certifying that the Tenant has fulfilled the components of the Approved Transition Plan that are within the Manager’s Scope of Work (or, with respect to those actions that may only be fulfilled as of the Handover Date, such actions are reasonably anticipated to be fulfilled as of the Handover Date) (a “**Handover Manager’s Certificate**”) or notify Tenant and District in writing of its decision not to issue a Handover Manager’s Certificate and state the reason for such decision (a “**Handover Manager’s Refusal Notice,**” together with the Handover Engineer’s Refusal Notice, the “**Handover Refusal Notice(s)**”).

Section 1.8.2. Handover Certificate. The Handover Engineer and the Handover Manager may each refuse to issue, as applicable, a Handover Engineer’s Certificate or a Handover Manager’s Certificate only if each such person determines during the Final Handover Inspection that Tenant failed to complete all of the requirements in the Approved Transition Plan that are within the each person’s applicable scope of work, including, without limitation, any Approved Renewal Works or Additional Renewal Work.

Section 1.8.3. Handover Refusal Notice. Any Handover Refusal Notice shall set out in reasonable detail each respect in which a condition to the issuance of a Handover Engineer’s Certificate or Handover Manager’s Certificate, as applicable, has not been met and shall state, as applicable, the Handover Engineer’s estimate of the cost of completing any Approved Renewal Works or Additional Renewal Work, if applicable, and/or the Handover Manager’s estimate of the cost of completing remaining activities of the Approved Transition Plan that are within the Manager’s Scope of Work. Tenant or District may, within thirty (30) days after receipt of a Handover Refusal Notice, by Notice to the other Party and the Handover Engineer and Handover Manager, object to any matter set out in the Handover Refusal Notice. Any such notice from Tenant or District shall give details of the grounds for such objection and shall give the Party’s proposals, if any, in respect of such matters. District, Tenant, and, as applicable, the Handover Engineer and/or the Handover Manager shall use reasonable efforts to reach a mutually acceptable

agreement, each exercising its reasonable discretion, on all the matters set out in the Handover Refusal Notice, but in the absence of an agreement within five (5) Business Days after receipt of such notice from Tenant or District to the other Party and the Handover Engineer or the Handover Manager, either District or Tenant may refer the matter, if applicable, to the Independent Expert selected as provided in Section 1.4 above. If the Independent Expert was not selected pursuant to Section 1.4 above and the Parties cannot agree as to the selection of the Independent Expert within such 5-Business Day period or if the dispute is such that it is not within the Independent Expert's scope of expertise, the Parties agree to resolve any such dispute in accordance with the terms of Section 1.11 below. Tenant and District shall use their reasonable efforts to cause such Independent Expert to render its determination not later than thirty (30) days after being appointed. The decision of the Independent Expert regarding the resolution of the Handover Refusal Notice shall be binding on the Parties.

If it is agreed by Tenant, District, and the Handover Engineer or the Handover Manager, or determined by the Independent Expert, as applicable, that Tenant has not completed the requirements of the Approved Transition Plan including any Approved Renewal Works or Additional Renewal Work, if applicable, then, at District's election in its sole and absolute discretion, District may require Tenant to pay to District an amount equal to the estimated cost of completing the requirements of the Approved Transition Plan including any such Approved Renewal Works or Additional Renewal Work, if applicable, as determined by Handover Engineer, Handover Manager, or the Independent Expert, as applicable, in accordance with the terms of the Lease (the "**Handover Amount**") in lieu of Tenant's obligations to complete the requirements of the Approved Transition Plan (except for any actions required of Tenant under Section 1.9 below to the extent not already performed by Tenant) including any such Approved Renewal Works or Additional Renewal Work, if applicable.

Section 1.9. Completion of Handover Process. In addition to its other responsibilities under this Exhibit, Tenant shall be responsible for carrying out the following as part of the Handover Process:

Section 1.9.1. Personal Property, Subcontracts, and Improvements. On or before the Handover Date, Tenant and District shall execute the following in form and substance mutually acceptable to the Parties, each exercising its reasonable discretion:

i. a bill of sale pursuant to which such Tenant's Personal Property owned by Tenant as District may elect to purchase pursuant to the terms of the Lease are to be transferred by Tenant to District on the Handover Date;

ii. an agreement or agreements between Tenant, District, and each subcontractor then providing services at or to the Leased Premises, pursuant to which any contract between Tenant and any such subcontractor as District may elect is assigned by Tenant to District and assumed by District, on the Handover Date;

iii. an agreement or agreements between Tenant, District, and any lessor of any of Tenant's Personal Property that is leased by Tenant, pursuant to which any lease agreement between Tenant and any such lessor relating to any such leased Tenant's Personal Property as

District may elect is assigned by Tenant to District and assumed by District, on the Handover Date; and

iv. a bill of sale confirming District's ownership to the Improvements pursuant to Section 2.5.1 of the Lease.

Section 1.9.2. Books and Records. On the Handover Date, in accordance with the requirements of Applicable Law, Tenant shall deliver to District in electronic form, and/or hard copy form if so requested by District, all information and records which are reasonably needed to ensure efficient operation of the Leased Premises. By no later than thirty (30) days prior to the Handover Date, District and Tenant will agree on those documents and records that shall be delivered to District. All information provided to District by Tenant shall be accurate, comprehensive, and up-to-date in all material respects.

Section 1.9.3. Potential Claims. The Leased Premises shall be transferred to District free and clear of any liens, claims, or actions by third parties against Tenant or its Members or Affiliates with respect to the Leased Premises or the Leasehold Estate.

Section 1.9.4. Contract Warranties. Tenant shall assign to District all rights of Tenant, if any, under all unexpired guarantees and warranties from its subcontractors and suppliers relating to the Leased Premises.

Section 1.9.5. Technology and Know-How. Tenant shall provide to District to the extent in Tenant's possession a copy of all technical documents, including functional specifications, operating manuals, and business processes charts, necessary to support continued operation of the Hospital and the Parking Facility.

Section 1.9.6. Latent Defects. For any construction work to the Leased Premises, including, without limitation, any Approved Renewal Works or Additional Renewal Work, if applicable, undertaken by the Tenant during the three (3) years immediately prior to the Handover Date, Tenant shall either assign (with the warrantor's express approval if required under the warranty), or Tenant shall identify and designate District as a third-party beneficiary under any warranty provided by any third party that Tenant hires to perform work at the Leased Premises, including but not limited to, Tenant's general contractor and design firm. Any such warranty will be consistent and commensurate with other warranties obtained by Tenant regarding coverage for defects for construction work performed by, or on behalf of Tenant, at the Leased Premises.

Section 1.9.7. Space Leases. The Leased Premises shall be transferred to District subject to any then existing Space Leases that comply with Sections 10.7, 10.8, and 12.4 of the Lease.

Section 1.10. Handover Standards. The standards for the Hospital and Parking Facility are as follows (collectively the "**Handover Standards**"): Tenant shall maintain the Leased Premises and the Total Personal Property in accordance with Section 3.2 of the Hospital Operations Agreement and Section 7.2.5 of the Lease. If, during the Lease Term, the Hospital Operations Agreement is not in effect, Tenant shall maintain the Leased Premises and the Total

Personal Property in accordance with the requirements of Section 7.2 of the Lease (including, without limitation Section 7.2.5).

Section 1.11. Dispute Resolution. In the event that District and Tenant cannot mutually agree (the “**Dispute**”) within the applicable time periods set forth above as to (i) the selection of the Handover Engineer or the Handover Manager, the Engineer’s Scope of Work or the Manager’s Scope of Work, or the allocation of the cost of the Handover Engineer or the allocation of the cost of the Handover Manager, (ii) the Approved Transition Plan, (iii) the selection of the Independent Expert, or (iv) the timeline and milestones to obtain, and the receipt of, the Third-Party Consents, then the Parties agree that such Dispute shall be submitted to the Mayor (or designee) and the CEO of the Tenant, who shall meet and confer and use their best efforts to resolve such Dispute within ten (10) days of such submission. If the Mayor (or designee) and the CEO of the Tenant are unable to resolve such Dispute within ten (10) days of such submission, the Parties may try in good faith to settle the Dispute by non-binding mediation. In such event, the Parties will choose a mutually agreeable neutral third party within ten (10) days’ notice from the Party opting to submit the dispute to non-binding mediation, who shall, within two (2) months of the submission to the mediator, mediate the Dispute pursuant to the Commercial Mediation Rules of the American Arbitration Association, the Alternative Dispute Resolution Service Rules of Procedure for Mediation of the American Health Lawyers Association, JAMS rules and procedures, or such other mutually agreeable rules and procedures as the Parties may decide. In the event that such mediation efforts are unsuccessful to resolve the Dispute within two (2) months after the submission to the mediator, or in any Party’s discretion, either Party may pursue its legal or equitable remedies as set forth in the Lease. The time period between when a Party notifies the other Party of a Dispute to the time such Dispute is resolved in accordance with this Section 1.11 is referred to as the “**Dispute Resolution Period**”.

Exhibit K

Form of Acknowledgment of Commencement Date

ACKNOWLEDGMENT OF COMMENCEMENT DATE

THIS ACKNOWLEDGMENT OF COMMENCEMENT DATE (this “**Acknowledgment**”) is executed as of this ____ day of _____, 20____ by and between the **DISTRICT OF COLUMBIA**, a municipal corporation, (“**District**”) and [_____], a Delaware limited liability company, (“**Tenant**”) (District and Tenant together, the “**Parties**”).

WHEREAS, the Parties executed that certain Lease Agreement dated as of [_____, 2020] (the “**Lease**”), under which District agreed to lease to Tenant, and Tenant agreed to lease from District and operate, the Leased Premises;

WHEREAS, the Lease contemplated multiple Commencement Dates based on the date of delivery of a Component for occupancy to the Tenant;

WHEREAS, the Parties acknowledge that a Certificate of Substantial Completion was issued for the portion of the Leased Premises described on Exhibit A attached hereto (the “**Delivered Component**”); and

WHEREAS, the Parties wish to memorialize the Commencement Date for the Delivered Component.

NOW THEREFORE, the Parties do hereby acknowledge and agree that the Delivered Component was delivered to Tenant for its occupancy as of [_____], as evidenced by the Certificate of Substantial Completion for such Delivered Component, which is attached hereto as Exhibit B. [The Parties also acknowledge and agree that the Expiration Date, except in the event of an early termination or an extension in accordance with the terms of the Lease, shall be [_____].² Any capitalized terms used but not defined herein shall have such meaning as defined in the Lease.

[signatures on following pages]

² Add this statement in Acknowledgement for the Inpatient Hospital (expiration to be 75 years after the commencement date for that component).

IN WITNESS WHEREOF, the Parties hereby execute this Acknowledgement as of the date indicated above.

DISTRICT OF COLUMBIA, a municipal corporation

BY: _____

Name:

Title:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ___ day of _____, 20___ by _____, the _____ for the District of Columbia, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, has executed the foregoing and annexed document as his/her free act and deed.

[Notarial Seal]

Notary Public

[Signatures continue on following page]

[ADD TENANT SIGNATURE BLOCK AND NOTARY]

EXHIBIT A
Description of Delivered Component
[including legal description of Land]

EXHIBIT B
Certificate of Substantial Completion

[see attached]

COLLABORATION AGREEMENT

Between and among

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

and

UNIVERSAL HEALTH SERVICES, INC.

and

UHS EAST END SUB, LLC

and

UHS BUILDING SOLUTIONS, INC.

Dated as of _____, 20____

Table of Contents

	Page
ARTICLE 1 COLLABORATION AND GOALS.....	2
1.1. Goals of Collaboration.....	2
1.2. Framework for Collaboration	4
1.3. Coordination	5
ARTICLE 2 COMMUNITY ENGAGEMENT.....	5
2.1. Community Engagement Plan	5
2.2. Community Investments and Commitments.....	5
ARTICLE 3 TERM AND TERMINATION	5
ARTICLE 4 GENERAL PROVISIONS	6
4.1. Entire Agreement.....	6
4.2. Amendments	6
4.3. Severability	6
4.4. Counterparts.....	6
4.5. No Implied Waivers.....	6
4.6. Interpretations	6
4.7. Time of Performance	7
4.8. Notices	7
4.9. Third-Party Beneficiaries.....	8
4.10. Waiver of Jury Trial.....	8
4.11. Anti-Deficiency Limitations	8
4.12. No Joint Venture	9
4.13. Litigation.....	9
4.14. Joint Preparation	9
4.15. Further Assurances.....	9
4.16. Law Applicable; Forum for Disputes	9
4.17. Conflict of Interests; Representatives Not Individually Liable	9
4.18. Survival.....	10
4.19. Assignment	10
4.20. Guaranty of Operating Entity and Development Entity Obligations.....	10
Exhibit A Development Agreement.....	A-1

Exhibit B Lease Agreement B-1
Exhibit C Hospital Operations Agreement C-1

COLLABORATION AGREEMENT

This Collaboration Agreement (this “**Agreement**”) is entered into as of _____, 20____ (the “**Effective Date**”), between and among the **GOVERNMENT OF THE DISTRICT OF COLUMBIA** (the “**District**”), Universal Health Services, Inc. (“**UHS**”), UHS East End Sub, LLC, a wholly-owned subsidiary of UHS (including any permitted successor or assignee, “**Operating Entity**”), and UHS Building Solutions, Inc., a wholly-owned subsidiary of UHS (including any permitted successor or assignee, “**Development Entity**”). The District, UHS, Operating Entity, and Development Entity each is referred to individually herein as a “**Party**” and collectively are referred to as the “**Parties**” to this Agreement.

RECITALS:

A. WHEREAS, the District is committed to enhancing access to high-quality, affordable health care for all residents and desires to ensure that inpatient and outpatient health care services are available to residents of Wards 7 and 8;

B. WHEREAS, the development of a new acute-care community hospital on the St. Elizabeths East Campus (including the inpatient facility (the “**Inpatient Hospital**”) and associated ambulatory pavilion and outpatient facilities (the “**Ambulatory Facility**”), together with the Inpatient Hospital, the “**Hospital**”) and multistory parking garage that will primarily serve the Hospital, its patients, visitors, and staff, and others with business at the Hospital (the “**Parking Facility**”) that will continue the District’s commitment to reinvesting in its communities and bringing world-class amenities to its residents, including access to comprehensive and quality health care services is a major goal of the District;

C. WHEREAS, in recognition of its commitment to ensuring construction of the Hospital and Parking Facility and enhanced access to health care services for its residents, the District approved, in the fiscal year 2019 six-year capital budget, the allocation and expenditure of up to three hundred seventy-five million dollars (\$375,000,000) for the development and construction of the Hospital and Parking Facility;

D. WHEREAS, the District has determined that it is in the best interest of the residents of the District of Columbia for the District to engage a private entity or entities with expertise in hospital design, construction, and operation to construct and operate the Hospital and Parking Facility;

E. WHEREAS, after construction, the District desires to own the Hospital and Parking Facility and to have the Hospital and Parking Facility leased, operated, maintained, and governed by an existing, highly qualified, financially strong, private third-party entity with significant health care delivery experience and a robust health delivery system;

F. WHEREAS, the District also seeks to expand health care options for its residents through additional private-sector health care investments in Wards 7 and 8, such as through the establishment and operation of urgent care facilities by private health care providers;

G. WHEREAS, George Washington University Hospital (“**GWUH**”) is owned and operated by District Hospital Partners, L.P. (“**DHP**”), a partnership between The George

Washington University and UHS of DC, Inc., an affiliate of UHS, one of the nation's largest health care management companies;

H. WHEREAS, GWUH, a 395-bed tertiary/quaternary teaching hospital located at 900 23rd Street, NW, with associated ambulatory and outpatient facilities (collectively, the "**Foggy Bottom Facility**"), is a key component of an integrated health care delivery system;

I. WHEREAS, Operating Entity is a wholly-owned subsidiary of UHS that, for purposes of the instant transaction with the District, will perform all rights and obligations set forth within this Agreement, the Hospital Operations Agreement (defined herein), and the Lease Agreement (defined herein);

J. WHEREAS, the District has determined that UHS and Operating Entity have the requisite experience and expertise in health care operations and delivery, particularly within the District of Columbia, for Operating Entity to lease, operate, and maintain the Hospital (meeting the criteria for the establishment of a new hospital in Washington, D.C.) and Parking Facility and to make other health care investments in Wards 7 and 8 as set out in the Hospital Operations Agreement;

K. WHEREAS, Development Entity is a wholly-owned subsidiary of UHS that, for purposes of the instant transaction with the District, will perform all rights and obligations set forth in the Development Agreement (defined herein);

L. WHEREAS, the District has determined that UHS and Development Entity have the requisite experience and expertise for Development Entity to serve as Program Manager (as defined in the Development Agreement) for design and construction of the Hospital and Parking Facility;

M. WHEREAS, Operating Entity wishes to expand the health care system in Wards 7 and 8, with a full continuum of care coordinated with the Foggy Bottom Facility's higher-level tertiary and quaternary care offerings and clinical faculty partners; and

N. WHEREAS, the District, Operating Entity, and Development Entity have determined that the Hospital and Parking Facility shall be established, and other health care investments made, through a collaboration between the District, Operating Entity, and Development Entity in accordance with the terms set forth herein and the Implementing Agreements (defined herein);

O. NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the District, UHS, Operating Entity, and Development Entity set forth their understandings with respect to this Agreement described below:

ARTICLE 1 COLLABORATION AND GOALS

1.1. Goals of Collaboration. The mutual goals of the Parties include the following:

1.1.1 Providing every resident within the District of Columbia with access to affordable, person-centric, and quality health care services in an appropriate setting, and enhancing access and addressing barriers to hospital inpatient, urgent care, medical specialty, and outpatient surgical services for residents in targeted communities;

1.1.2 Building a new, financially strong, state-of-the-art, acute-care community hospital on the St. Elizabeths East Campus that will provide high quality specialty services and integrate existing and new health care providers to establish solutions to the challenges of health access, equity and quality for Wards 7 and 8 residents;

1.1.3 Utilizing the expertise of UHS, a private sector party with significant health care delivery experience, through Operating Entity, to operate the Hospital and Parking Facility in a manner that best serves the interests of the residents of the District of Columbia and utilizing the expertise of UHS and Development Entity to efficiently assist in the design and construction of the Hospital and Parking Facility in accordance with the terms hereof;

1.1.4 Among other additional private sector health care investments, establishing and operating new urgent care and/or ambulatory care facilities in Wards 7 and 8 to meet the needs of the community;

1.1.5 Establishing an integrated system of care anchored on the campus of St. Elizabeths East Campus by the Hospital, urgent care services operated by Operating Entity, additional investments in health care infrastructure and services, and newly established partnerships with existing and new community providers of primary health care and specialty health care that will improve the health of residents in Wards 7 and 8 and throughout the District of Columbia;

1.1.6 Operating the Hospital, through Operating Entity, in coordination with the Foggy Bottom Facility, to expand the existing integrated health system to the Hospital and Wards 7 and 8, with a full continuum of care with access to the Foggy Bottom Facility's higher-level tertiary/quaternary services and clinical faculty partners;

1.1.7 Promoting engagement in appropriate, quality, and timely primary care services, including preventative, acute, and chronic disease management;

1.1.8 Promoting a comprehensive approach to integrating medical and behavioral health services in primary care, medical specialty care, and behavioral health outpatient clinics;

1.1.9 Promoting evidence-informed and place-based strategies to support individuals with the most prevalent chronic and/or complex conditions;

1.1.10 Reducing inappropriate emergency department utilization;

1.1.11 Increasing availability of high-quality medical specialty services for individuals and families;

1.1.12 Reducing barriers for private practitioners, including local providers, to serve Medicaid patients as valued participants of the health care delivery system;

1.1.13 Promoting well-coordinated, patient-centered care transitions that enhance patients' recoveries, increase independence, and reduce inappropriate hospital readmissions;

1.1.14 Promoting multi-sector collaboration with and across service systems and sectors;

1.1.15 Enhancing health information exchange and technology systems in the District and surrounding region; and

1.1.16 Committing the necessary resources to accomplish the aforementioned goals.

1.2. Framework for Collaboration. In furtherance of the goals described in Article 1.1, the Parties have set forth certain details pertaining to the development, lease, and operation of the Hospital and Parking Facility in the implementing agreements (collectively, the "**Implementing Agreements**") described as follows, each of which is attached hereto and which may be amended from time to time in accordance with their terms:

1.2.1 *Development Agreement.* Pursuant to the terms of the Development Agreement, attached hereto as Exhibit A (as may be amended in accordance with its terms, the "**Development Agreement**"), Development Entity shall serve as Program Manager for construction of the Hospital and Parking Facility in accordance with the specifications set forth therein, which include, without limitation, the details of construction, including design and operation requirements, timeline for construction, development and completion milestones, labor and contractor requirements associated with design and construction, and a payment schedule and payment obligations.

1.2.2 *Lease Agreement.* The District shall retain ownership of the facilities and land that comprise Hospital and Parking Facility but shall lease such facilities and land to Operating Entity (*i.e.*, Tenant) under a long-term lease (as may be amended in accordance with its terms, the "**Lease Agreement**"), which is attached hereto as Exhibit B. The Lease Agreement describes the term of Operating Entity's occupancy of the Hospital and Parking Facility and obligations to operate the Hospital in accordance with the terms set forth herein, including the Hospital Operations Agreement (defined below). Pursuant to the terms of the Lease Agreement, Operating Entity may purchase the Hospital and Parking Facility from the District or enter into modified lease terms pertaining to the Hospital and Parking Facility, each of which is subject to Operating Entity's requirements to continue to operate an Inpatient Hospital and Ambulatory Facility, which shall continue to be branded in a manner consistent with the branding of the Foggy Bottom Facility.

1.2.3 *Hospital Operations Agreement.* Operating Entity shall operate the Hospital and Parking Facility in accordance with the hospital operations agreement (as may be amended in accordance with its terms, the "**Hospital Operations Agreement**"), attached hereto as Exhibit C. The Hospital Operations Agreement defines the relationship between Operating Entity and the District with regard to hospital operations, the establishment of other health care facilities and the making of other health care investments, and establishes the type and level of services to be offered in Hospital and performance standards for the provision of these services.

To the extent the terms of any Implementing Agreement conflict with the terms of this Agreement, the terms of the applicable Implementing Agreement shall govern.

1.3. Coordination. From and after the Effective Date until the Ambulatory Facility Opening Date (as defined in the Hospital Operations Agreement) or the date on which the Board of the Hospital is formed (whichever is earlier), Operating Entity shall convene a meeting with the Mayor (or designee(s)) (collectively, the “**Mayor**”) and the employee of UHS or its Affiliate (as defined in Article 1 of the Lease Agreement) who serves as the Chief Executive Officer of GWUH (or designee(s)) no less than quarterly (the “**Coordination Meeting**”) to discuss the status of the Parties’ obligations under this Agreement and the Implementing Agreements, including, without limitation, construction of the Hospital and Parking Facility; the respective financial commitments of the Parties; workforce development; and Operating Entity’s acquisition of the materials and licenses necessary to operate the Hospital and Parking Facility in accordance with the Hospital Operations Agreement. Each Party shall provide any financial, administrative, operational or other information concerning the matters set forth herein that the other Party may reasonably request. In addition to the Coordination Meetings, the Parties or their respective affiliates shall meet regularly, as provided in the Development Agreement, to coordinate construction of the Hospital and Parking Facility and to address any issues that arise in that process.

ARTICLE 2 COMMUNITY ENGAGEMENT

2.1. Community Engagement Plan. To ensure the Hospital and Parking Facility meet the health care needs of the District of Columbia’s residents, and, in particular, the residents of Wards 7 and 8, the Parties shall facilitate meaningful engagement of the community, including health care stakeholders, with regard to the construction and operation of the Hospital and Parking Facility. This community and stakeholder engagement shall be undertaken in accordance with the terms of a Community Engagement Plan to be developed by the Parties pursuant to the Hospital Operations Agreement.

2.2. Community Investments and Commitments. As described in greater detail in the Implementing Agreements, in connection with the construction and operation of the Hospital and Parking Facility, Operating Entity will make a number of community investments and commitments, including providing workforce development opportunities to residents of Washington, D.C., executing agreements with the District setting forth District resident hiring requirements, and executing agreements with the District setting forth certified business enterprise utilization requirements.

ARTICLE 3 TERM AND TERMINATION

The term (“**Term**”) of this Agreement shall commence on the Effective Date and shall continue so long as any Implementing Agreement remains in effect. In the event that all Implementing Agreements have been terminated or expired in accordance with their terms, this Agreement shall have no further force and effect.

ARTICLE 4 GENERAL PROVISIONS

4.1. Entire Agreement. This Agreement, together with the Implementing Agreements, represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations, or agreements, either written or oral, pertaining to the subject matter of this Agreement.

4.2. Amendments. This Agreement may be amended or modified only in a writing executed by UHS, Operating Entity, Development Entity, and the Mayor. The Mayor shall have the authority to approve on behalf of the District such amendments or modifications as the Mayor shall determine to be in the best interests of the District.

4.3. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Agreement. Furthermore, in such event, the Parties shall immediately amend this Agreement to add a provision that is legal, valid, and enforceable and as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

4.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

4.5. No Implied Waivers. No waiver by a Party of any term, obligation, condition, or provision of this Agreement shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition, or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

4.6. Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Agreement," and other similar references shall be construed to mean and include this Agreement and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Agreement to any person includes its successors and assigns (as otherwise permitted under this Agreement) and, in the case of any governmental authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Agreement, includes a

reference to that document or agreement as novated, amended, supplemented, or restated from time to time. References to any exhibits shall be construed to mean references to such exhibits as revised from time to time. The terms “include” and “including” shall be construed at all times as being followed by the words “without limitation” or “but not limited to” unless the context specifically indicates otherwise.

4.7. Time of Performance. All dates for performance (including cure) in this Agreement shall expire at 11:59 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, District of Columbia recognized holiday, or day in which the District of Columbia government is officially closed for business is automatically extended to the next Business Day (defined herein).

4.8. Notices.

4.8.1 *To District.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to the District at the following addresses:

Department of Health Care Finance 441 4th Street, NW, 900S Washington, DC 20001 Attention: Director	and	Department of General Services 2000 14 th Street, NW, 8 th Floor Washington, DC 20009 Attention: Director
--	-----	--

With copies to:

Department of Health Care Finance 441 4th Street, NW, 900S Washington, DC 20001 Attention: General Counsel	and	Department of General Services 2000 14 th Street, NW, 8 th Floor Washington, DC 20009 Attention: General Counsel
---	-----	---

4.8.2 *To UHS.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to UHS at the following addresses:

Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attention: General Counsel

4.8.3 *To Operating Entity.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to Operating Entity at the following addresses:

UHS East End Sub, LLC
c/o Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attention: General Counsel

4.8.4 *To Development Entity.* Any notices given under this Agreement shall be in writing and delivered (a) by U.S. Certified Mail (return receipt requested, postage pre-paid), (b) by hand, (c) by reputable private overnight commercial courier service, or (d) such other means as the Parties may agree in writing, to Development Entity at the following addresses:

UHS Building Solutions, Inc.
c/o Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attention: Vice President Design and Construction

4.8.5 Notices served upon UHS, Operating Entity, Development Entity, or the District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (a) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (b) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (c) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. “**Business Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government, or days on which the District of Columbia government is officially closed. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement. The Parties agree that counsel to any of them may provide notice to the other Parties under this Agreement.

4.9. Third-Party Beneficiaries. Except as otherwise expressly provided herein relating to performance guarantee, nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third-party beneficiary of this Agreement or any provision hereof.

4.10. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

4.11. Anti-Deficiency Limitations.

4.11.1 UHS, Operating Entity, and Development Entity acknowledge that the District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District’s authority to make such obligations is and shall remain subject to the provisions of (i) the federal Antideficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official

Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

4.11.2 UHS Operating Entity, and Development Entity acknowledge and agree that any unauthorized action by the District is void.

4.12. No Joint Venture. The District, UHS, Operating Entity, and Development Entity are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between them, or any third party, a relationship of principal and agent, employment, partnership, or joint venture. There shall be no joint and several liability between the District and any other Party.

4.13. Litigation. UHS, Operating Entity, and Development Entity shall furnish to the District notice of each action, suit, or proceeding before any court or other governmental body or any arbitrator which concern UHS's, Operating Entity's, or Development Entity's ability to fulfill its obligations under this Agreement, in each case no later than the tenth (10th) Business Day after the service of process with respect to such suit or proceeding or UHS's, Operating Entity's, or Development Entity's otherwise obtaining knowledge thereof.

4.14. Joint Preparation. The District, UHS, Operating Entity, and Development Entity each acknowledge that it has thoroughly read and reviewed this Agreement, including all exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party hereto.

4.15. Further Assurances. Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

4.16. Law Applicable; Forum for Disputes. This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. The District, UHS, Operating Entity, and Development Entity agree that any suit, action, or proceeding arising out of this Agreement, or any transaction contemplated hereby, shall be brought exclusively in the (a) the courts of the District of Columbia, and (b) the United States District Court for the District of Columbia. The District, UHS, Operating Entity, and Development Entity irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

4.17. Conflict of Interests; Representatives Not Individually Liable. No official or employee of the District shall participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any District of Columbia agency, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the District shall be personally liable to Operating Entity or any successor-in-interest or to

Development Entity or any successor-in-interest in the event of any default or breach by the District or for any amount that may become due to Operating Entity or such successor-in-interest or to Development Entity or any successor-in-interest or on any obligations hereunder.

4.18. Survival. The termination or expiration of this Agreement for any reason will not affect the accrued rights or obligations of any Party under this Agreement that by their terms are intended to survive such termination or expiration.

4.19. Assignment. In the event the Lease Agreement is assigned pursuant to Section 10.2.1 thereof, UHS, Operating Entity, and Development Entity shall have the right to assign this Agreement, without the consent or approval of the District, to such Person (as defined in Article 1 of the Lease Agreement) who is an Affiliate to whom the Lease Agreement is assigned. Except as set forth in the immediately preceding sentence, no Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Party. If assigned, this Agreement will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Where the term “Operating Entity,” “Development Entity,” or “District” is used in this Agreement, it shall mean and include their respective authorized successors and assigns.

4.20. Guaranty of Operating Entity and Development Entity Obligations. Pursuant to, and in accordance with the terms of, that certain Guaranty Agreement by UHS of even date herewith (the “**Guaranty**”), UHS shall guarantee the performance of Operating Entity and Development Entity under this Agreement, the Development Agreement, the Hospital Operations Agreement, and the Lease Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**GOVERNMENT OF THE DISTRICT OF
COLUMBIA**

Name: [INSERT NAME]
Title: [INSERT TITLE]

UNIVERSAL HEALTH SERVICES, INC.

Name: [INSERT NAME]
Title: [INSERT TITLE]

UHS EAST END SUB, LLC

Name: [INSERT NAME]
Title: [INSERT TITLE]

UHS BUILDING SOLUTIONS, INC.

Name: [INSERT NAME]
Title: [INSERT TITLE]

Exhibit A
Development Agreement

Exhibit B
Lease Agreement

Exhibit C

Hospital Operations Agreement

GUARANTY

THIS GUARANTY (“**Guaranty**”) dated as of _____, 2020 (the “**Effective Date**”), of **UNIVERSAL HEALTH SERVICES, INC.**, a Delaware corporation (“**Guarantor**”), is for the benefit of and delivered to the **DISTRICT OF COLUMBIA**, a municipal corporation (“**District**”).

RECITALS

WHEREAS, District is the fee simple owner of the parcel of real property located in the District of Columbia and known for assessment and taxation purposes as Lot 0859, Square 5868-S (the “**Land**”);

WHEREAS, simultaneously herewith, District, UHS East End Sub, LLC, a wholly-owned subsidiary of Guarantor (including any permitted successors or assigns, the “**Operating Entity**”), and UHS Building Solutions, Inc., a wholly-owned subsidiary of Guarantor (including any permitted successor or assign, the “**Development Entity**”) entered into a Collaboration Agreement (as may be amended in accordance with its terms, the “**Collaboration Agreement**”) outlining a collaboration between the District, the Operating Entity, and the Development Entity with respect to the construction and operation of a Hospital and Parking Facility (as such terms are defined in the Collaboration Agreement) and other related matters;

WHEREAS, simultaneously herewith, District and Development Entity entered into a Development Agreement (as may be amended in accordance with its terms, the “**Development Agreement**”) pursuant to which District contracted with Development Entity to provide program management services in connection with the design, construction, furnishing, equipping, activation, and commissioning of the Hospital and supporting facilities, and Development Entity wishes to provide those services on the terms and conditions set forth therein;

WHEREAS, simultaneously herewith, District and Operating Entity entered into a Hospital Operations Agreement (as may be amended in accordance with its terms, the “**Hospital Operations Agreement**”) pursuant to which Operating Entity agreed to operate the Hospital and Parking Facility in accordance with the terms and conditions set forth therein;

WHEREAS, simultaneously herewith, District and Operating Entity as the “**Tenant**” entered into a Lease Agreement (as may be amended in accordance with its terms, the “**Lease Agreement**”) pursuant to which District agreed to lease to Operating Entity and Operating Entity agreed to use, operate, maintain, and improve the Hospital and Parking Facility in accordance with the terms and conditions of the Lease Agreement and the Hospital Operations Agreement during the time the Hospital Operations Agreement is in effect;

WHEREAS, Operating Entity is a subsidiary of Guarantor;

WHEREAS, it is the intention of Guarantor, and a condition to the willingness of District to enter into the Collaboration Agreement, Development Agreement, Hospital Operations Agreement, and Lease Agreement (collectively, the “**Guaranteed Agreement**”) that Guarantor guaranties all of the payment and performance obligations of Operating Entity and the Development Entity (Development Entity shall for the purposes of this Guaranty be deemed to be included in the definition of “Operating Entity”) under the Guaranteed Agreement, as set forth in this Guaranty;

WHEREAS, Guarantor has substantial direct or indirect economic and/or ownership interest in Operating Entity and will derive substantial benefit from the District’s lease of the Hospital and Parking Facility to Operating Entity and Operating Entity’s operation of the Hospital and Parking Facility;

NOW, THEREFORE, in consideration of the premises and an inducement for and in consideration of the agreement of District entering into and performing its obligations under the Guaranteed Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, hereby agrees and covenants to District as follows:

1. Guarantor does hereby irrevocably guarantee (i) the full and prompt payment by Operating Entity of all of Operating Entity’s payment obligations to District under the Guaranteed Agreement, including, without limitation, payment obligations arising as a result of a breach or failure by Operating Entity to perform any of its respective obligations at the times and in the manner provided in the Guaranteed Agreement, and (ii) the full and timely performance of all obligations of Operating Entity under the Guaranteed Agreement, including, without limitation, obligations of Operating Entity to operate the Hospital and Parking Facility pursuant to the terms of the Hospital Operations Agreement (collectively (i) and (ii) referred to as “**Guaranteed Obligations**”).

2. Intentionally Deleted.

3. This Guaranty may only be assigned, amended or modified by a writing signed by the parties hereto and any successors and assigns of District’s rights under the Guaranteed Agreement.

4. Guarantor’s obligation of payment pursuant to this Guaranty is an absolute, primary, unconditional, and irrevocable guaranty of payment and not of collection and, except with respect to the performance obligations set forth in Section 1(ii), Guarantor shall have no obligation to perform under the Guaranteed Agreement. This Guaranty shall remain in full force and effect until all of the obligations of the Operating Entity under the Guaranteed Agreement to District have been satisfied in full. Guarantor acknowledges that District has executed the Guaranteed Agreement in material reliance upon this Guaranty. District shall have no obligation to assert any claim or demand or to enforce any remedy under the Guaranteed Agreement or to proceed first against Operating Entity or any other person or entity, or resort to any security or make of any effort to obtain payment or performance by Operating Entity or any other person or entity. No delay or omission by District to exercise any right under this Guaranty shall impair any right, nor shall it be

construed to be a waiver thereof. No waiver of any single breach or default under this Guaranty shall be deemed a waiver of any other breach or default.

5. If Operating Entity fails or refuses to pay or perform any Guaranteed Obligation when due (subject to any applicable notice and/or cure period of the Operating Entity pursuant to the Guaranteed Agreement) and District elects to exercise its rights under this Guaranty, District shall make demand upon Guarantor (a “**Demand**”). Such Demand shall be in writing, shall refer to this Guaranty, shall specifically identify Operating Entity, shall reasonably and briefly specify in what manner and what amount Operating Entity has failed to pay or what obligation Operating Entity has failed to perform and provide an explanation of why such payment or performance is due, with a specific statement that District is calling upon to pay or to perform or to cause performance in accordance with this Guaranty. A Demand satisfying the foregoing requirements when delivered to Guarantor shall be required in respect of any Guaranteed Obligation before Guarantor is required to pay or to perform or to cause performance of such Guaranteed Obligation in accordance with this Guaranty and shall be deemed sufficient notice to Guarantor that it must pay or perform or cause performance of such Guaranteed Obligation. A single written Demand that complies with the terms of this Guaranty shall be effective as to any specific failure to pay or perform during the continuance of such failure to pay or perform, until Operating Entity, or Guarantor, has fully cured such failure to pay or perform, and additional written demands concerning such failure to pay or perform shall not be required until such failure to pay or perform is fully cured.

6. The liability of Guarantor under this Guaranty shall be absolute, primary (with respect to payment), unconditional, and irrevocable, irrespective of: (a) any change in time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other amendment to, modification of (including change orders), waiver of, or any consent to departure from, the Guaranteed Agreement; (b) any change in ownership of Guarantor or Operating Entity; (c) any bankruptcy, insolvency, or reorganization of, or other similar proceedings involving Operating Entity; (d) any assignment or transfer of the Guaranteed Agreement by the Operating Entity (excluding when a replacement guaranty is provided by a new guarantor approved by District in accordance with the terms of Section 4.8 of the Lease Agreement); or (e) any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. Guarantor’s obligations under this Guaranty shall not be released, impaired, reduced or otherwise affected by, and shall continue in full force and effect notwithstanding the occurrence of, any event, including, without limitation, the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, dissolution, or lack of authority of the Operating Entity whether now existing or hereafter arising.

7. Nothing in this Guaranty diminishes or waives Operating Entity rights, setoffs, counterclaims, and other defenses to which Operating Entity is or may be entitled under the Guaranteed Agreement.

8. If a claim is made upon District at any time for repayment or recovery of any amounts received by District from any source on account of any of the Guaranteed

Obligations and District, pursuant to a court order or applicable law, repays or returns any amounts so received, then Guarantor shall remain liable for the amounts so repaid (such amounts being deemed part of the Guaranteed Obligations) to the same extent as if such amounts had never been received by District, notwithstanding any termination hereof or the cancellation of any instrument or agreement evidencing any of the Guaranteed Obligations.

9. Guarantor hereby irrevocably, unconditionally, and expressly waives, to the fullest extent permitted by applicable law, promptness, diligence, presentment, notice of acceptance, and other notice (except as for any notice required pursuant to the terms of this Guaranty) with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that District protect, secure or perfect any security interest, or exhaust any right or first proceed against Operating Entity or any other person or entity.

10. District may, without notice to Guarantor and without affecting in any way its rights hereunder:

- a. modify or otherwise change any terms of all or any part of the Guaranteed Agreement or grant any extension(s) or renewal(s) for any period or periods of time for payment or performance or grant any other indulgence(s) with respect thereto and effect any release, compromise or settlement with respect thereto;
- b. enter into any agreement of forbearance with respect to all or any part of the payment or performance due under the Guaranteed Agreement, or with respect to all or any part of the collateral securing the payment and performance by Operating Entity or Guarantor of its obligations, and change the terms of any such agreement;
- c. enter into any agreement or agreements with the Operating Entity concerning then existing or additional obligation; and/or
- d. release or effect any settlement or compromise with respect to the payment or performance of the Guaranteed Agreement by Operating Entity or any other party primarily or secondarily liable for the payment or performance of the Guaranteed Agreement.

Notwithstanding anything to the contrary contained in the foregoing, to the extent that any of the events referred to above directly reduces the extent or nature of, or eliminates any or all of, the Guaranteed Obligations, Guarantor shall be entitled to the benefit of such reduction in, or elimination of, the Guaranteed Obligations.

11. Subject to Paragraphs 6, 8, and 9 hereof, Guarantor hereby reserves to itself all rights, setoffs, counterclaims, and other defenses to which Operating Entity is or may be entitled to under the Guaranteed Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution, or liquidation of Operating Entity.

12. Guarantor represents and warrants to District as of the Effective Date that:
- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to perform.
 - b. The execution, delivery, and performance of this Guaranty by Guarantor has been and remains duly authorized by all necessary action, corporate or otherwise, and do not contravene any provision of its certificate of incorporation or bylaws or any law, regulation or contractual restriction binding on it or its assets.
 - c. All consents, authorizations, approvals, registrations, and declarations required for the due execution, delivery, and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
 - d. This Guaranty constitutes the legal, valid, and binding obligation of Guarantor, enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights or by general equity principles.
 - e. Except as disclosed by Guarantor to District, no actions, suits, or proceedings are pending or, to, as applicable, Guarantor's knowledge, threatened against or affecting Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change in the financial condition of Guarantor (in comparison to any state of affairs existing before the Effective Date) or adversely affect the ability of Guarantor to perform, or of District to enforce, any provision of this Guaranty.
 - f. Guarantor is not insolvent (as such term is defined or determined for purposes of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330), as amended or recodified, or any other bankruptcy law, and the execution and delivery of this Guaranty will not make Guarantor insolvent.
 - g. Neither this Guaranty nor any certificate or written statement furnished to District by or on behalf of Guarantor contains any untrue statement of a material fact or intentionally, or knowingly, omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading.
 - h. There are no conditions precedent to the effectiveness of this Guaranty.

- i. Guarantor is not a Prohibited Person (as such term is defined in the Lease Agreement).
- j. Prior to the Effective Date, Guarantor provided to District (i) a certification from the Chief Financial Officer of Guarantor confirming the ability of Guarantor to meet its obligations under this Guaranty; and (ii) unless not otherwise publicly available through SEC's EDGAR service, Guarantor's most recent audited annual financial statements (including without limitation, a balance sheet, income statement and statement of cash flows, and any footnotes related thereto), all prepared in accordance with generally accepted accounting principles.

All representations, warranties, and covenants made by Guarantor herein shall be considered to have been an inducement to and relied upon by District in consummating the transaction contemplated by the Guaranteed Agreement and shall survive the delivery to District of this Guaranty until payment of all Guaranteed Obligations has been received in full by District, regardless of any investigation made or not made by or on behalf of District.

13. This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by District and its successors and permitted assigns under the Guaranteed Agreement. Guarantor's liability under this Guaranty shall remain in full force and effect until the earlier of (a) (i) receipt by District of full payment of all Guaranteed Obligations under the Guaranteed Agreement in accordance with the terms hereof and thereof and (ii) performance in full of all Guaranteed Obligations under the Guaranteed Agreement in accordance with the terms hereof and thereof or (b) release by District.

14. Guarantor subordinates and shall not assert any claim, right, or remedy that Guarantor may now have or hereafter acquire against Operating Entity, or any of its assets or property that arises from the performance by Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right, or remedy that District may have against Operating Entity or any collateral for the Guaranteed Obligations that District now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law, or otherwise until such time as Operating Entity pays such Guaranteed Obligations in full.

15. Upon the occurrence and during the continuance of (a) any failure by Guarantor to pay the Guaranteed Obligations within twenty (20) days after the date that Guarantor receives written notice from District that Guarantor owes District such Guaranteed Obligations as provided in this Guaranty, (b) the dissolution or insolvency of Guarantor, (c) the inability of Guarantor to pay its debts generally as they mature, (d) a general assignment by Guarantor for the benefit of creditors that is not dismissed or stayed within one hundred twenty (120) days filing, (e) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors,

or for the appointment of a receiver, trustee, or custodian for Guarantor or its properties that is not dismissed or stayed within one hundred twenty (120) days after receipt of notice of filing, (f) the falsity in any material respect of any representation made to District by Guarantor in this Guaranty, or (g) any other default by Guarantor of any other obligations owed to District by Guarantor in this Guaranty which is not remedied within the applicable notice and/or cure period (a “**Guarantor Default**”), District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty in accordance with the terms hereof, independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations as to Operating Entity, and it shall not be necessary for District to marshal assets in favor of Operating Entity, Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty in accordance with the terms hereof. Additionally, Guarantor agrees that during the continuance of any Guarantor Default, District may, without the consent of or notice to Guarantor take or refrain from taking such other action to enforce the provisions of this Guaranty against Guarantor as it may from time to time determine in its sole discretion as to any obligations then unperformed.

16. This Guaranty shall be governed by and enforced in accordance with the law of the District of Columbia without the application of principles of conflict of law which would apply the substantive law of any other jurisdiction. Each of Guarantor and District hereby expressly waives any right to a trial by jury in any action or proceeding to enforce or defend any rights (a) under this Guaranty or the Guaranteed Agreement, including any amendments thereto, or (b) arising from any relationship existing in connection herewith or therewith, and agrees that any such action or proceeding shall be tried before a court and not before a jury.

17. All demands, notices or communications to Guarantor shall be in writing and shall be directed by registered or certified mail or overnight delivery service to:

Universal Health Services, Inc.
367 South Gulph Road
King of Prussia, PA 19406
Attn: General Counsel – Matthew Klein

or such other address as Guarantor shall from time to time specify in writing to District.

18. Notwithstanding anything to the contrary contained in this Guaranty, the maximum aggregate amount that Guarantor shall incur in connection with the payment and performance of any and all Guaranteed Obligations shall not exceed the total sum equal to the Maximum Amount (as defined below). As used in this Section, the term “**Maximum Amount**” shall mean (i) from the Effective Date until the fifth (5th) anniversary of the Effective Date, the amount of ONE-HUNDRED MILLION AND NO/100 DOLLARS (\$100,000,000.00) and (ii) after such fifth (5th) anniversary of the Effective Date, the amount of SEVENTY-FIVE MILLION AND NO/100 DOLLARS (\$75,000,000.00).

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered by its duly authorized officer, and District accepts and agrees to the terms hereof, as of the date first written above.

GUARANTOR:

UNIVERSAL HEALTH SERVICES, INC.

By: _____
Name:
Title:

DISTRICT:

THE DISTRICT OF COLUMBIA

By: _____
Name:
Title:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



PRIVILEGED AND CONFIDENTIAL
ATTORNEY CLIENT WORK PRODUCT

Commercial Division
Government Contracts Section

REVISED MEMORANDUM

TO: Ronan Gulstone, Director
Office of Policy and Legislative Affairs

FROM: Robert Schildkraut (by *David Fisher*)
Section Chief

DATE: June 2, 2020

SUBJECT: Approval of the Agreements for the New Hospital at St. Elizabeths, including

- **Collaboration Agreement**
- **Development Agreement**
- **Hospital Operations Agreement**
- **Lease Agreement**
- **Guaranty**

Contractors: Universal Health Services, Inc. (UHS) and its wholly owned subsidiaries UHS East End, LLC, and UHS Building Solutions, Inc.
Total Not to Exceed Amount: \$400,000,000.00 (\$375,000,000 for Development Agreement and \$25,000,000 for Hospital Operations Agreement)

This is to Certify that this Office has reviewed the above-referenced new St. Elizabeth Hospital documents which includes the following agreements (Hospital Project Documents):

- Collaboration Agreement between and among the District, UHS, East End and Building Solutions;
- Development Agreement between the District and Building Solutions;
- Hospital Operations Agreement between the District and East End;
- Lease Agreement between the District and East End; and
- Guaranty between the District and UHS.

We have found the Hospital Project Documents to be legally sufficient conditioned on the following:

- 1) The Hospital Project Documents contain some provisions that would not be consistent with current requirements of District law (*e.g.*, Termination for Convenience, First Source, Certified Business Entity and Quick Payment), if legislation to authorize the Agreements is not enacted by the Council, as drafted. If the Council alters the proposed legislation to remove the blanket waivers of all existing provisions of District law, this

legal sufficiency certification will be void and the Hospital Project Documents will require additional review.

- 2) All Hospital Project Documents containing the agreed upon edits between the Office of the City Administrator and the Office of the Attorney General are signed by the prospective contractor.
- 3) A proper funding certification is received before the Mayor or her designee signs the Hospital Project Documents.

If you have any questions in this regard, please do not hesitate to call me at 202-724-4018.



Date of Notice: May 29, 2020

Notice Number: L0004112023

UHS BUILDING SOLUTIONS, INC.
367 S. GULPH RD.
KING OF PRUSSIA PA 19406

FEIN: **-***6763
Case ID: 493853

CERTIFICATE OF CLEAN HANDS

As reported in the Clean Hands system, the above referenced individual/entity has no outstanding liability with the District of Columbia Office of Tax and Revenue or the Department of Employment Services. As of the date above, the individual/entity has complied with DC Code § 47-2862, therefore this Certificate of Clean Hands is issued.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS, AND FEES
CHAPTER 28 GENERAL LICENSE
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
D.C. CODE § 47-2862 (2006)
§ 47-2862 PROHIBITION AGAINST ISSUANCE OF LICENSE OR PERMIT

Authorized By Marc Aronin
Chief, Collection Division

To validate this certificate, please visit MyTax.DC.gov. On the MyTax homepage, click “Clean Hands” and then the “Validate a Certificate of Clean Hands” hyperlink.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CORPORATIONS DIVISION



C E R T I F I C A T E

THIS IS TO CERTIFY that all applicable provisions of the District of Columbia Business Organizations Code (Title 29) have been complied with and accordingly, this **CERTIFICATE OF GOOD STANDING** is hereby issued to

UHS Building Solutions, Inc.

WE FURTHER CERTIFY that the qualified foreign entity is registered to do business in the District; that all fees, and penalties owed to the District for entity filings collected through the Mayor have been paid and Payment is reflected in the records of the Mayor; The entity's most recent biennial report required by § 29-102.11 has been delivered for filing to the Mayor; and the entity's registration has not been terminated. This office does not have any information about the entity's business practices and financial standing and this certificate shall not be construed as the entity's endorsement.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of 5/27/2020 2:24 PM

Business and Professional Licensing Administration



Josef G. Gasimov

JOSEF G. GASIMOV
Superintendent of Corporations,
Corporations Division

Muriel Bowser
Mayor

Tracking #: 1M3bZtgi



Date of Notice: May 29, 2020

Notice Number: L0004115853

UHS EAST END SUB, LLC
367 S GULPH RD
KING OF PRUSSIA PA 19406-3121

FEIN: **-***1504
Case ID: 484972

CERTIFICATE OF CLEAN HANDS

As reported in the Clean Hands system, the above referenced individual/entity has no outstanding liability with the District of Columbia Office of Tax and Revenue or the Department of Employment Services. As of the date above, the individual/entity has complied with DC Code § 47-2862, therefore this Certificate of Clean Hands is issued.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS, AND FEES
CHAPTER 28 GENERAL LICENSE
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
D.C. CODE § 47-2862 (2006)
§ 47-2862 PROHIBITION AGAINST ISSUANCE OF LICENSE OR PERMIT

Authorized By Marc Aronin
Chief, Collection Division

To validate this certificate, please visit MyTax.DC.gov. On the MyTax homepage, click “Clean Hands” and then the “Validate a Certificate of Clean Hands” hyperlink.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CORPORATIONS DIVISION



C E R T I F I C A T E

THIS IS TO CERTIFY that all applicable provisions of the District of Columbia Business Organizations Code (Title 29) have been complied with and accordingly, this **CERTIFICATE OF GOOD STANDING** is hereby issued to

UHS East End Sub, LLC

WE FURTHER CERTIFY that the domestic filing entity is formed under the law of the District on 5/13/2020; that all fees, and penalties owed to the District for entity filings collected through the Mayor have been paid and Payment is reflected in the records of the Mayor; The entity's most recent biennial report required by § 29-102.11 has been delivered for filing to the Mayor; and the entity has not been dissolved. This office does not have any information about the entity's business practices and financial standing and this certificate shall not be construed as the entity's endorsement.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of 5/27/2020 2:31 PM

Business and Professional Licensing Administration



Josef G. Gasimov

JOSEF G. GASIMOV
Acting Superintendent of Corporations
Corporations Division

Muriel Bowser
Mayor

Tracking #: vPALAlvx